

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

UNITED STATES OF AMERICA Criminal No. RWT-11-514
v. Greenbelt, Maryland
JOSE MORALES, August 1, 2013
Defendant. 9:00 a.m.

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TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE ROGER W. TITUS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography,
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P R O C E E D I N G S

THE COURT: Good morning.

MS. WILKINSON: Your Honor, would you like me to call the case?

THE COURT: Yes. Call the case. That's fine.

MS. WILKINSON: Yes, Your Honor. Calling the matter of United States of America versus Jose Morales, Criminal Number RWT-11-514. Sandra wilkinson and Martin Clarke on behalf of the U.S. Attorney's Office. With us at counsel table is Special Agent Mike Ryka from the D.E.A. We are here for sentencing.

THE COURT: All right. Counsel, while we're waiting for other participants, go ahead and --

MR. ZUCKER: Jonathan Zucker on behalf of Jose Morales.

MR. PROCTOR: Gary Proctor, Your Honor, on behalf of Jose Morales.

THE COURT: Good morning. Counsel, while we're waiting for the technological issues to resolve themselves, let me, first of all, confirm as I'm required to that all parties have had a chance to review the presentence report and in the case of defense counsel to review it with Mr. Morales. Is that correct?

MS. WILKINSON: Yes, sir, for the government.

MR. ZUCKER: Yes, sir.

1 THE COURT: I have also received -- I want to
2 make sure I got all the submissions -- three submissions.
3 Two by the government. One by the defense which
4 essentially was a copy of a submission made to the Justice
5 Department on the question of whether to seek the death
6 penalty or not in the other case that's coming up in the
7 fall.

8 MR. PROCTOR: You've got it all.

9 THE COURT: There's nothing overlooking -- okay.
10 And I have reviewed all of that carefully. There are some
11 orders to seal that I'm going to enter today. Both relate
12 to the government's memoranda. So I will place those
13 under seal and enter those orders.

14 I also want to confirm that prior to this
15 sentencing proceeding, issues had arisen concerning the
16 defendant's desire to have two people testify. And there
17 were discussions between the parties and in the case of
18 one, Ms. Sadler, the parties reached an agreement that she
19 could testify by video and that's what she is going to be
20 doing this morning. Is that correct?

21 MR. PROCTOR: Yes, sir. With one add-on that
22 I'll let --

23 MR. ZUCKER: There's another witness issue we
24 need to address.

25 THE COURT: And the other issue -- other witness

1 is here.

2 MR. ZUCKER: Judge, there's another issue that,
3 frankly, we should have raised sooner and we did not. In
4 reviewing the government's submission on page 3 of their
5 memorandum --

6 THE COURT: Which one? The second or the first
7 one?

8 MR. PROCTOR: First one.

9 MR. ZUCKER: First one. I apologize.

10 THE COURT: First submission. Page what?

11 MR. ZUCKER: Page 3.

12 THE COURT: Okay. I'm there.

13 MR. ZUCKER: There's a paragraph that's indented
14 that makes reference to a call from Mr. -- allegedly a
15 call from Mr. Morales --

16 THE COURT: Right.

17 MR. ZUCKER: -- where there's a claim that I got
18 my sister, Ellen, to do it once. The Ellen that's
19 referred to is Ellen Rewis, who is Mr. Morales' sister and
20 is here today and is prepared to deny that that ever
21 occurred. We should have disclosed it to the government
22 in advance and to the Court. It frankly was overlooked.
23 But she is here today and is prepared to give that
24 testimony and I've asked her to step outside so that there
25 wouldn't be a violation of the rule on witness. It would

1 be very short testimony --

2 THE COURT: I assume you will want the rule on
3 witnesses invoked. I will do so. If there's any
4 witnesses in the room that you expect to testify, they
5 should be excused except when they're testifying.

6 MS. WILKINSON: Your Honor, just for the record
7 the government does object to the late disclosure.

8 THE COURT: Excuse me?

9 MS. WILKINSON: The government does object to
10 calling this witness because of the late disclosure.

11 THE COURT: How is the government prejudiced by
12 that?

13 MS. WILKINSON: Because we're not prepared to
14 cross-examine her.

15 THE COURT: Counsel?

16 MR. ZUCKER: Well, for whatever it's worth, I
17 expect the testimony to be very short. Thirty seconds.
18 It will be just a denial that it occurred.

19 THE COURT: Are there questions as to whether
20 she needs to have counsel to advise her with regard to her
21 potential testimony?

22 MR. ZUCKER: She has already testified in front
23 the grand jury I believe. We don't know. We have not
24 been given that testimony. It's never been disclosed to
25 us. Nor whether she said anything that conflicts with

1 this in the grand jury. But I believe that she has been
2 called as a grand jury witness, at least that's what we've
3 been told by other family members. Is that correct?

4 MS. WILKINSON: No, Your Honor. She has not
5 testified in the grand jury.

6 THE COURT: They're not aware of any grand jury
7 testimony by her.

8 MR. ZUCKER: Okay. Then I've been misinformed.

9 THE COURT: If this italicized text would
10 indicate that the defendant is saying that he got his
11 sister to do it once and you're saying she would come in
12 here and say, no, I didn't.

13 MR. ZUCKER: I expect the sum testimony to be
14 that's not true and I was never asked to do anything of
15 the sort. Period. And I think the government --

16 THE COURT: She may need to have advice of
17 counsel concerning that if she had in fact done it and
18 would have said on the stand that she did not, that would
19 be perjury. On the other hand, if she did do it and
20 described that she had done it, then that can be in the
21 same status as Ms. Sadler.

22 MR. ZUCKER: My understanding is that there's
23 absolutely no basis to believe that that statement was
24 true and she will deny it.

25 THE COURT: well, let me tell you this. I've

1 gotten a note here indicating that Ms. Sadler would be
2 connected to us at 9:15. So we are going to have to be
3 flexible this morning --

4 MR. ZUCKER: Understood.

5 THE COURT: -- whenever she's ready. And you
6 can ask her whatever questions you want. And the
7 government can inquire and so forth. You also have
8 another witness to go. So I'm going to defer making any
9 decision --

10 MR. ZUCKER: Very well.

11 THE COURT: -- with respect to this potential
12 witness. What's the name of the witness by the way?

13 MR. ZUCKER: Ellen Rewes. I think it's
14 R-E-W-E-S.

15 THE COURT: How?

16 MR. ZUCKER: R-E-W-E-S. First name, Ellen,
17 common spelling. E-L-L-E-N I believe.

18 THE COURT: All right. Well, I will defer
19 making a ruling on that question.

20 MR. ZUCKER: It's actually R-E-W-I-S.

21 THE COURT: R what?

22 MR. ZUCKER: R-E-W-I-S.

23 THE COURT: Okay. All right. Well, I'm going
24 to defer making a decision on that matter.

25 MS. WILKINSON: May I confer with Mr. Zucker for

1 a moment and Mr. Proctor?

2 THE COURT: Certainly.

3 (Counsel conferred.)

4 MS. WILKINSON: Just for the record, I was
5 advising counsel that I had -- I wanted to clarify my
6 statement. Sitting here today, I have zero recollection
7 of putting Ms. Rewis in the grand jury. But I have put a
8 lot of witnesses in this case in the grand jury.

9 THE COURT: I can't --

10 MS. WILKINSON: He's just going to confirm if
11 I --

12 THE COURT: I can't remember what I had for
13 breakfast this morning. So I understand.

14 MR. ZUCKER: In this instance, counsel is right.

15 MS. WILKINSON: Okay. Good. I'm glad to know
16 I'm not crazy. Thank you, Your Honor.

17 MR. ZUCKER: At least the witness thinks she's
18 right.

19 THE COURT: Okay. All right. Okay. Are there
20 any other minor matters we can deal with before we get
21 connected at 9:15? Since this was a plea to the
22 indictment without an agreement, I do not have the benefit
23 of any sentencing memorandum from the defense that
24 addresses the specific determinations and recommendations
25 made by the probation officer. Let me just go through

1 some of those right now so I can understand what the
2 issues are we're going to have to address during the
3 course of the sentencing proceeding this morning.

4 Is there disagreement with respect to the
5 recitation of the offense conduct in paragraphs 7 through
6 21 by the defense? That's reflected in the -- counsel,
7 take a look at that while we're connecting. I just want
8 to know what if any facts in the offense conduct portion
9 of the PSR from paragraph 7 through 21 are disputed.

10 (Pause.)

11 THE COURT: When the witness is here, let us
12 know. All right. Counsel, do you have another witness
13 you wanted to call?

14 MR. ZUCKER: There was another witness, but I
15 believe he's here physically. Do you want to do that now?

16 THE COURT: Why don't we get all the testimony
17 out of the way then? In the meantime, I want you to be
18 ready to tell me what parts of this presentence report and
19 the factual section you agree or disagree with. Whoever
20 is going to be speaking to Ms. Sadler, they need to speak
21 at the lectern when she's on.

22 MR. PROCTOR: Judge, the principal objection to
23 the statement of facts would be the quantity and --

24 THE COURT: Where is this?

25 MR. PROCTOR: I don't yet know that we have a

1 dispute. Ms. Sadler is represented by counsel who, you
2 know, we obviously respected that. Didn't talk to her.
3 That's why we're calling her. It's a matter in dispute.
4 It may be that I have no objections after hearing her
5 testimony.

6 THE COURT: Well, then I'll defer. If I
7 understand you correctly though that with respect to the
8 factual statements contained in the presentence report
9 from paragraph 7 through 21, which if I recall correctly
10 essentially what was in the plea letter, not the plea
11 agreement, but the plea letter the government gave me, the
12 only question you're raising is that whether the drug
13 quantity is correct.

14 MR. PROCTOR: And whether the use of a child is
15 correct, which would be paragraph 21, the last one.

16 THE COURT: Okay. All right. Well, we'll have
17 to address those in the course of it. But if you have
18 your witness ready, why don't we call your witness?

19 MR. PROCTOR: I don't know if the Court wants to
20 break it up. I don't know if this witness is minutes,
21 seconds away or many minutes.

22 THE COURT: Oh, there's a delay with him, too.

23 MR. PROCTOR: No. He's here. But it's going to
24 be 15, 20 minutes I would think when we start.

25 THE COURT: Whenever they're ready, we'll just

1 interrupt what we're doing.

2 MR. PROCTOR: Okay.

3 THE COURT: So if that witness is available. Is
4 he downstairs or is he here?

5 THE MARSHAL: Downstairs, Your Honor.

6 THE COURT: well, bring him up. Yeah. Call him
7 up and we'll bring him up.

8 (Pause.)

9 MR. ZUCKER: The defense calls Marshawn Stokes
10 to the stand.

11 THE CLERK: Okay. If I could ask you to stand
12 and raise your right hand for me?

13 Thereupon,

14 MARSHAWN STOKES,
15 having been called as a witness on behalf of the
16 Defense and having been first duly sworn by the
17 Deputy Clerk, was examined and testified as follows:

18 THE CLERK: All right. Thank you. Please be
19 seated. I'll need you to pull that microphone right there
20 in front of you, pull it a little closer. And you'll have
21 to speak into the microphone this way. Thanks.

22 MR. ZUCKER: May I proceed, judge?

23 THE COURT: You may proceed.

24 MR. ZUCKER: Thank you.

25 DIRECT EXAMINATION

1 BY MR. ZUCKER:

2 Q Good morning, Mr. Stokes.

3 A How you doing?

4 Q My name is Jonathan Zucker --

5 THE COURT: You are going to have to get that
6 mic right up to your mouth.

7 THE WITNESS: Oh, okay.

8 THE COURT: Pull the chair up and get the mic
9 right up to your mouth. I can't hear you.

10 THE WITNESS: How you doing?

11 THE COURT: Thank you.

12 BY MR. ZUCKER:

13 Q Very well. Thank you. My name is Jonathan
14 Zucker. I represent Jose Morales, the gentleman to my
15 left. You know him. Correct?

16 A Yes.

17 Q Okay. And we're here to discuss conversations
18 that you had with Mr. Morales. But before we get to that,
19 you didn't know Mr. Morales prior to being incarcerated.
20 Is that correct?

21 A No.

22 Q And when were you first incarcerated?

23 A When I was first incarcerated?

24 Q Please.

25 A 1997.

1 Q Okay. And when did you first meet Mr. Morales?

2 A I would say April or May of 2012.

3 Q And at that point you had been incarcerated for
4 how long? About 15 years?

5 A Yes.

6 Q And when and where did you first meet
7 Mr. Morales?

8 A At Allenwood USP Pennsylvania.

9 Q And he was incarcerated as well. Is that
10 correct?

11 A Yes.

12 Q How did you first come to know Mr. Morales?

13 A Some other guys from Baltimore introduced me to
14 him.

15 Q And were these other guys from Baltimore in the
16 same unit with you and him?

17 A No. Just on the same compound.

18 Q And they introduced to you Mr. Morales?

19 A Yes.

20 Q What were their names, please?

21 A Speedy, Jerem.

22 Q I'm sorry. Speedy. Do you down Speedy's real
23 name?

24 A No.

25 Q And Jerem or Germ?

1 A Jerem as in Jeremy.

2 Q Do you know a full name?

3 A No. Mush. It was a whole lot of guys. We all
4 go by nicknames. I don't know any of their real names.

5 Q Okay. Are those the only three or are there
6 more nicknames?

7 A There were more people.

8 Q That introduced you to Mr. Morales?

9 A It was a few of us that walked up. When we
10 walked up, he was talking to other guys from Baltimore at
11 the time. We were just all standing there talking.

12 Q And where did this occur?

13 A On the compound of Allenwood USP.

14 Q When you say on the compound, where are we? Are
15 we in the yard? Are we in the gym? Where are we?

16 A On the walkway in between the yards.

17 Q And so he was with -- was he with Speedy, Jeremy
18 and Mush?

19 A I can't say he was with me. We were all
20 together.

21 Q Let's see as we could be as -- I know this is a
22 while ago. But as best you can recall, who was
23 Mr. Morales talking with when you were first introduced to
24 him?

25 A I'm going to try to be specific. Like I said,

1 it was a lot of guys there.

2 Q Let's start with the three you mentioned, Speedy
3 Jeremy and Mush. Were they walking with you or were they
4 walking with you?

5 A If I recall, they were walking with me. And I
6 think he was talking to -- I forgot the other guy's name.
7 They were Baltimore guys. I can't remember all the guys
8 that were out there that day.

9 Q Do you remember any? Can you name any that he
10 was talking to?

11 A Not specifically.

12 Q And other than being introduced to him by name,
13 what else occurred between you and he in that
14 conversation?

15 A He asked me what building I was in. I told him
16 I was in 1A. He told me he used to be in that unit
17 before. And that I let him know I was the only Baltimore
18 guy up there. He asked was there any bed space up there.
19 I told him I would check. And that he was going to try to
20 move up to where I was at.

21 Q And so the first conversation you had with him,
22 he indicated he wanted to come move into wherever you
23 were?

24 A Not into my cell. Just the unit because he used
25 to be there before he left I guess to go to court.

1 Q And when was the next conversation you had with
2 him to the best you recall?

3 A I don't know. Maybe later that day when we went
4 to dinner or the next time we saw each other in the yard.
5 I don't know exactly.

6 Q Did there come a time when you and he became
7 more friendly?

8 A Well, we started talking more after he -- it
9 wasn't long. He moved to the unit with me.

10 Q Okay. And do you know how long after you first
11 met him that he moved to the unit?

12 A I guess within a week or two. It wasn't long.
13 It wasn't long at all.

14 Q So you said this conversation was April or May.
15 So we're now, it's well into May?

16 A If I remember right. It was a long time ago.

17 Q Understood. And when he moved into the unit,
18 you and he weren't cell mates. Right?

19 A No.

20 Q Okay. What contact did you have together in the
21 unit or from that point forward when he came into the
22 unit?

23 A We sat together every day. We --

24 Q Sat together where?

25 A On the unit. Like watching T.V. We cooked

1 together. We walked to dinner together, lunch and then we
2 actually started working together.

3 Q That was at Unicorp?

4 A Yes.

5 Q And who else did you and he associate with in
6 the unit?

7 A A lot of people, guys from the D.C., Maryland
8 area.

9 Q Okay. Were they present when you had
10 conversations with Mr. Morales?

11 A Sometimes.

12 Q Can you name those guys?

13 A Ty, Jay.

14 Q And these were guys that were in the unit with
15 you, Ty and Jay?

16 A Ty, Jay, Rock, I.G.

17 Q Do you know any of their real names?

18 A No.

19 Q Do you know how to contact -- how we could
20 contact any of them?

21 A No.

22 Q Now previously -- you know you're here today
23 because you've made certain representations about
24 conversations you had with Mr. Morales. Correct?

25 A Yes.

1 Q Okay. And to the best of your recollection,
2 well, some of those conversations related to a former
3 co-defendant of his, Ms. Sadler. Correct?

4 A Who.

5 Q Terry?

6 A Yes.

7 Q Okay. Where did these conversations that
8 related to Terry occur?

9 A Sometimes we were sitting in the computer room
10 at work or when we were walking or in my room.

11 Q Well, in particular, you made reference to a
12 conversation when he said he wanted to get with Terry.
13 Correct?

14 A Um-hum.

15 Q Were those his words?

16 A Yes.

17 Q Okay. Did that conversation occur one time, two
18 times, three times that he used the expression I want to
19 get with Terry?

20 A It was more than once.

21 Q How many times?

22 A I can't say specifically how many times, but it
23 was more than once.

24 Q Okay. Where was the first one?

25 A You mean like as far as the cell, walking or --

1 Q Yes.

2 A I know we were definitely at Allenwood USP.

3 where we were at that very first time, when he made that
4 statement, I'm not actually sure. But I mean we had these
5 conversations at various spots. But frankly, where in the
6 jail when he made specific comments, I don't know the very
7 first time.

8 Q well, you said there were several. And the term
9 he used was he wanted to get with her. Correct?

10 A Right.

11 Q He never said that he wanted to kill her.
12 Right?

13 A No.

14 Q He never said he wanted to harm her. Right?

15 A No.

16 Q And he never said he wanted to prevent her from
17 testifying, did he?

18 A Yes.

19 Q when did he say that?

20 A well, he said that several times.

21 Q where?

22 A Allenwood USP.

23 Q Can you give us -- you were at Allenwood USP for
24 years. Right?

25 A No.

1 Q At least Mr. Morales. Right?

2 A I wasn't there for years.

3 Q Okay. Can you tell us specifically where you
4 were when this conversation that he wanted to stop her
5 from testifying occurred?

6 A What exact location in the jail? Like I said we
7 talked and walked so many places all day every day. I
8 can't just say yeah, we were sitting here, we were sitting
9 there because we talk all the time.

10 Q I understand. But you were -- you had one
11 specific conversation I take it where you said you wanted
12 to stop her from testifying or prevent her from
13 testifying?

14 A Not one specific conversation. He said that
15 more than once.

16 Q Where did he -- how many times did he say that?

17 A I can't give you any time. But I know we had
18 that conversation more than one time.

19 Q Was it more than five times?

20 A It may be around that. Maybe.

21 Q Okay. You can't say maybe more than five times?

22 A I know it was definitely more than once.

23 Q And can you tell us where any of these
24 conversations occurred?

25 A Like I said, we talked about it in the computer

1 room before. I remember -- like I said, I don't know if
2 it was the first time, but I specifically remember talking
3 about it once in the computer room.

4 Q And who else was there?

5 A It probably wasn't no one in there at the time.
6 He's not going to talk that way around everyone else.

7 Q I see. So you were a special confidante of his?

8 A I mean you will have to ask him that. I'm don't
9 know who he actually speaks to.

10 MR. PROCTOR: Your Honor, I'm sorry. The other
11 witness perhaps --

12 THE COURT: All right. We'll interrupt this
13 witness and bring him back in when we're ready to resume.

14 MR. ZUCKER: Thank you.

15 THE COURT: Administer the oath to her.

16 THE CLERK: Okay. If I could get her to please
17 stand?

18 THE COURT: Ms. Sadler, please stand up.

19 THE CLERK: And raise your right hand.

20 Thereupon,

21 TERRY SADLER,
22 having been called as a witness on behalf of the
23 Defense and having been first duly sworn by the
24 Deputy Clerk, was examined and testified as follows:

25 THE CLERK: Okay. Thank you. Would you just

1 state your name, please?

2 THE WITNESS: Terry Lynn Sadler.

3 THE CLERK: Okay. Thank you. You may be
4 seated.

5 MR. ZUCKER: Judge, my monitor just went dead.
6 I could use the other ones. But I don't know if there is
7 a way to turn this one back on.

8 THE COURT: What went dead? Your monitor?

9 MR. ZUCKER: Yeah. I had a picture before.
10 I'll proceed. We don't have to wait.

11 THE COURT: All right.

12 MR. ZUCKER: But if this could be turned on, I'd
13 appreciate it.

14 DIRECT EXAMINATION

15 BY MR. ZUCKER:

16 Q Good morning, Ms. Sadler. Can you see me?

17 A I can. Good morning.

18 Q My name is Jonathan Zucker. I represent Jose
19 Morales. How are you?

20 A I'm okay.

21 Q Can you hear me okay?

22 A Yes.

23 Q Okay. If you could keep your voice up a little
24 bit because I think we're having a little trouble hearing
25 you in the courtroom.

1 Ms. Sadler, I want to ask you some
2 questions about Mr. Morales. Number one, did Mr. Morales
3 ever do anything to discourage you from testifying?

4 A No.

5 Q Did he ever threaten you in any way in relation
6 to testifying against him?

7 A No.

8 Q You and he had conversations where it was clear
9 that he knew you were testifying against him. Isn't that
10 correct?

11 A Yes.

12 Q And that -- can you keep your voice up a little
13 more? It's getting really hard to hear you in here. I
14 don't know if there's a mic there you can sit closer to.

15 A Okay. Is that better?

16 Q That's much better. Thank you very much except
17 for the feedback. It was clear to you -- you and he had
18 discussed that you had agreed to testify against him in
19 order to get a lesser sentence for yourself?

20 A Yes.

21 Q Okay. And he did nothing to discourage you in
22 that regard, did he, ma'am?

23 A No, he did not.

24 Q And prior to -- well, you've had frequent
25 contacts with Mr. Morales, well, throughout the last few

1 years. Isn't that correct, ma'am? At least letters?

2 A Absolutely.

3 MR. ZUCKER: For what it's worth, the technical
4 person in the courtroom says if you take the mic in your
5 hand, but step away a little bit further from the T.V.,
6 you might not have that feedback if you want to try it.
7 And just take the mic right in your hand if you can?

8 THE WITNESS: Is that better?

9 MR. ZUCKER: Actually, no. The sound is worse.
10 Can you hear? Try it now, please.

11 THE WITNESS: I can hear perfectly.

12 MR. ZUCKER: If you slide a couple of feet to
13 your right, maybe the mic will pick you up better. The
14 other way. No, no. Go closer to the mic and see if that
15 helps. To your right. Yes. Just move a foot or two that
16 way. Thank you. And just speak -- can you hear me okay?

17 THE WITNESS: I can hear you fine.

18 MR. ZUCKER: It's a little better.

19 BY MR. ZUCKER:

20 Q You've had frequent contact with Mr. Morales
21 throughout the years including at least weekly letter
22 writing?

23 A Yes.

24 Q Is that correct?

25 A Yes.

1 Q Okay. And in any of that time, has he done
2 anything to dissuade you from testifying against him?

3 A Never.

4 Q If you could -- the sound is really horrible.

5 A No.

6 Q Can you try and pick up the mic for a second and
7 just see if that works because the mic is --

8 A No, he has not.

9 Q Just to make sure we got that correctly --

10 A Can you hear me?

11 Q -- you said that he never did anything to try to
12 dissuade you or discourage you from testifying against
13 him. Is that correct?

14 A No, he hasn't.

15 Q Have you ever felt that he's ever done anything
16 to endanger your life?

17 A No. Never.

18 Q Do you have any fear for Mr. Morales whatsoever?

19 A Do I have fear? No.

20 Q Now you did agree that you had brought heroin
21 into a correctional facility at the request of
22 Mr. Morales. Is that correct?

23 A Yes.

24 Q How many times did you actually transfer heroin
25 to Mr. Morales and leave the facility with him having it?

1 was it one time or twice?

2 A Once.

3 Q And did you attempt -- you said once. Correct?

4 A Yes.

5 Q Okay. Do you recall when that was?

6 A It was like in May.

7 Q Do you recall of what year?

8 A 2010.

9 Q And do you know the quantity involved?

10 A No. Not at all.

11 Q Was there another attempt where you tried to
12 bring quantity in, but couldn't?

13 A Yes.

14 Q And did the time that you made the one transfer,
15 was that actually the same quantity you tried the first
16 time and couldn't give it to him and did it the second
17 time?

18 A No.

19 Q Do you recall -- okay. You said you made one
20 transfer and one attempted transfer. Is that correct?

21 A The people got dropped off to me two times. The
22 first time it made it in. The second time in September,
23 it didn't.

24 Q And that was the quantity found at your house?

25 A Yes.

1 Q And there were no other transfers into an
2 institution. Is that correct?

3 A No. God, no.

4 Q Now if you recall, the quantity you brought in
5 the first time, well, the only time --

6 A Um-hum.

7 Q -- was that smaller than the quantity that was
8 recovered from your house?

9 A A little bit, yes.

10 Q Can you estimate how much smaller? Was it half
11 the size?

12 A I'm not real good with stuff like that. The
13 only thing I can compare it to the second time, it was
14 like a very small Bounty ball that you buy at the grocery
15 store for like a quarter for your kids. A little bit
16 smaller than that.

17 Q And the first one was smaller than that?

18 A Yeah. A little bit.

19 Q But you can't tell if it was half, three
20 quarters, two-thirds. No way to compare?

21 A No. I'm really dumb when it comes to stuff like
22 that. I don't know much about drugs at all.

23 Q Now in September of 2010, there was a
24 conversation you made reference to during prior testimony
25 when Mr. Morales asked you to bring your daughter, Shayla,

1 to visit him. Do you recall that?

2 A I do.

3 Q Okay. And what was your understanding of why he
4 wanted your daughter brought to visit him?

5 A It's his daughter. He wanted to see her. Never
6 for any kind of danger or anything. He wanted to see his
7 daughter.

8 Q Okay. Did it coincide with any birthdays if you
9 recall?

10 A Yes. His birthday. September 24th.

11 Q Did it have anything to do with your bringing
12 narcotics into the institution in your opinion?

13 A No. Not at all. Not at all.

14 Q Were those separate events?

15 A No.

16 Q Was one intended to facilitate the other at all?

17 A No. No.

18 MR. ZUCKER: A moment to consult.

19 (Pause.)

20 BY MR. ZUCKER:

21 Q You said Mr. Morales' birthday is
22 September 24th. When is Shayla's birthday?

23 A Yes. September 27th.

24 Q I'm sorry. You got a lot of feedback. Just
25 repeat your answer, please.

1 A September 27th.

2 Q So it was --

3 A Three days after her father's.

4 Q I'm sorry. Repeat what you just said.

5 A Three days after her father's.

6 Q Okay. All right. And the reason she was being
7 brought related to whose birthday or both?

8 A Probably both because she wouldn't be able to
9 see him on hers. She didn't have visits on her birthday.
10 But she knew it was her dad's birthday today, the 24th.

11 THE COURT: Have her speak slower and repeat the
12 answer.

13 BY MR. ZUCKER:

14 Q Could you repeat your answer only because we're
15 having trouble hearing you here?

16 THE COURT: And speak slower.

17 BY MR. ZUCKER:

18 Q Maybe you can try it a little slower and
19 directly into the mic without moving it towards the T.V.
20 Maybe that will help. Go ahead.

21 A She wouldn't get a visit on her birthday. But
22 she knew she was going to see her father on his birthday.
23 So probably to her it was for those reasons.

24 MR. ZUCKER: Thank you. No other questions.
25 Well, a moment to consult.

1 (Pause.)

2 MR. ZUCKER: Nothing further. Thank you.

3 CROSS-EXAMINATION

4 BY MS. WILKINSON:

5 Q Good morning, Ms. Sadler. Do you remember me?

6 A I do. Hi, Ms. Sandy.

7 Q How are you?

8 A I'm okay. And you?

9 Q I'm good. Ms. Sadler, I have a few questions
10 for you about your direct testimony. Can you hear me all
11 right?

12 A I can hear you.

13 Q Okay. Mr. Zucker asked you some questions about
14 whether or not Mr. Morales had ever tried to dissuade you
15 or discourage you from telling the truth to law
16 enforcement. Do you remember those questions?

17 A Uh-huh.

18 Q Do you remember those questions that he just
19 asked you?

20 A I do.

21 Q Okay. I'm having a little trouble hearing you,
22 but hopefully you can hear me all right. Those first
23 conversations when you spoke to Mr. Morales, at the time
24 you were charged with the offense, were they while
25 Mr. Morales was in jail?

1 A Yes.

2 Q And so he knew that his conversations obviously
3 were being recorded, of course. Yes?

4 A Yes.

5 Q And then there came a time when you were
6 arrested. Yes?

7 A Yes.

8 Q And when you entered your plea, you were then
9 represented by an attorney. Is that fair to say?

10 A Yes.

11 Q Okay. And when you were represented by an
12 attorney, Ms. Cresta Savage, she advised you not to have
13 any contact with him. Correct?

14 A Yes.

15 Q And in fact after your plea, you didn't have any
16 contact with him. Correct?

17 A Correct.

18 Q Indeed I think you entered your plea sometime in
19 November, December of 2012. Does that sound right?

20 A Yes.

21 Q And at some point, you had or 2011 I should say.
22 At some point did you remember testifying in the grand
23 jury?

24 A Yes.

25 Q And when you testified in the grand jury, I have

1 the transcript in front of me. The date was June 19,
2 2012. Do you remember that?

3 A Yes.

4 Q Okay. So at the time you testified in the grand
5 jury, you had already entered your plea. Correct?

6 A Yes.

7 Q And at that point you hadn't yet testified in
8 front of the grand jury, of course. Right?

9 A Right.

10 Q So from the time that you entered your plea and
11 then the time you went into the grand jury, you didn't
12 have any contact with Mr. Morales. Correct?

13 A No. I didn't have any contact with Mr. Morales
14 until December 2013 or November.

15 Q At the time you entered your plea which was in
16 2011 and continuing all up to 2013, you had no contact
17 with him?

18 A Correct.

19 Q So these conversations that you told Mr. Zucker
20 about where he didn't discourage you or threaten you, they
21 happened before then, in 2011. Is that fair to say?

22 A Yes.

23 Q And if you had conversations with him since
24 then, which have been I think you just told us
25 December 2012?

1 A The December that just passed. Yes.

2 Q Right. And those were what, written letters or
3 how was it that you were --

4 A Yes.

5 Q -- getting in contact with him. Letters?

6 A Letters.

7 Q And I haven't obviously seen those letters. But
8 in those times, were the discussions primarily about your
9 daughter?

10 A They were 95% of the time about my daughter.
11 Yes.

12 Q And so from prior to or at least for the time
13 period that we're talking about here, your plea and then
14 your testimony in the grand jury and when you ultimately
15 surrendered yourself to serve your sentence, you hadn't
16 had any contact with Mr. Morales?

17 A No contact at all.

18 Q So you don't know whether or not he was
19 discouraging your testimony. Correct?

20 MR. ZUCKER: Objection.

21 THE COURT: Wait a minute.

22 THE WITNESS: That is correct.

23 THE COURT: There's an objection. Wait a
24 minute. The basis of objection?

25 MR. ZUCKER: The basis of objection you don't

1 know whether he was trying to discourage her testimony.
2 They had no contact during that period. He hadn't done
3 anything.

4 THE COURT: Well, rephrase the question.

5 MS. WILKINSON: Very well.

6 BY MS. WILKERSON:

7 Q Mr. Morales -- you had not talked to Mr. Morales
8 between the time of your plea and December of 2012 and
9 therefore, there were no conversations about you telling
10 the truth and coming forward. Correct?

11 A Correct.

12 Q Now at some point, you surrendered yourself to
13 serve your sentence. Do you remember when that was?

14 A It was August 13th.

15 Q of 20 --

16 A 2012.

17 Q 2012?

18 A 12. Yes.

19 Q And where did you surrender yourself? Where are
20 you here for the record?

21 A I'm in Hazelton, West Virginia.

22 Q Okay. And are you in West Virginia because you
23 have family in West Virginia?

24 A Yes.

25 Q Okay. And who is in West Virginia?

1 A My daughter is here.

2 Q Your daughter?

3 A My daughter is here and my mother and father.

4 Q And they live somewhat in the same state so they
5 can come visit you and the like?

6 A Forty-five minutes away.

7 Q And that's why the judge agreed to the
8 recommendation for you to go to west Virginia. Yes?

9 A Yes, ma'am.

10 Q And when you turned yourself in in August of
11 2012, you hadn't had any contact with Mr. Morales in June
12 of 2012?

13 A No.

14 Q July of 2012?

15 A No.

16 Q August of 2012?

17 A No.

18 Q And you had not told him or discussed with him
19 the entirety of your grand jury testimony. Is that fair
20 to say?

21 A Yes.

22 Q Now when the time that you turned yourself in in
23 August of 2012, were you -- are you married?

24 A I am.

25 Q And what is your husband's name?

1 A Dominic.

2 Q And what does he do for a living?

3 A He's a longshoreman.

4 Q And where does he -- I don't want his address
5 obviously. But what's the general area that your husband
6 is a longshoreman in?

7 A Baltimore. Baltimore, Maryland. South
8 Baltimore.

9 Q And again, I don't want you to say the address,
10 but where does he live? What area of Baltimore?

11 A In Baltimore. Baltimore, Maryland as well.

12 Q And can you give me any further geographic area
13 of Baltimore within the city?

14 A Close to Dundalk and Middle River.

15 Q Thank you. Now Mr. Zucker was asking you
16 questions about when you would take your daughter to go
17 visit Mr. Morales. Do you remember those questions?

18 A Yes.

19 Q And Mr. Morales' birthday being in
20 September 24th I think you said. Correct?

21 A It is. September 24th. Yes.

22 Q Now you remember throughout May and June and
23 into September of 2010, that's when you and Mr. Morales
24 were discussing among other things bringing heroin into
25 the jail where he was serving his sentence. Correct?

1 A Yes.

2 Q And those conversations that you were having
3 with him come to find out we were listening to them
4 because they were being recorded. Is that fair so say?

5 A Yes.

6 Q And you have in fact listened to a number of
7 those conversations of you and Mr. Morales discussing in
8 coded conversation the fact that he wanted you to bring
9 heroin to him. Correct?

10 A Yes.

11 Q And in some of those conversations he referred
12 to things such as the white things or putting things in
13 plastic, that sort of coded words. Correct?

14 A Yes.

15 Q And what did those words mean to you? What were
16 they code for?

17 A Code to put the parcel of the drugs into
18 balloons to bring in.

19 Q And so you and he would talk. You didn't say
20 the word, heroin. You would use this coded language that
21 he was suggesting. Correct?

22 MR. ZUCKER: Objection to scope, judge.

23 THE COURT: Hold on. I can't hear you. Speak
24 in the mic.

25 MR. ZUCKER: The objection is scope.

1 THE COURT: Overruled.

2 THE WITNESS: No. We never discussed anything.

3 BY MS. WILKERSON:

4 Q Now after a while -- strike that. A particular
5 call that I had questioned you about occurred actually on
6 September 11th of 2010 and I actually have the transcript
7 in front of me and given the fact that you're there, I
8 actually have the call. But I think if you will all agree
9 with me that my transcript is a fair and accurate
10 transcript of a recording, we'll go that way.

11 MS. WILKINSON: And now it is actually, Your
12 Honor, the full transcript is I know marked as
13 Government's Exhibit 1 for the proceeding. It's actually
14 attached as an exhibit partially to our submission.

15 THE COURT: Which exhibit number is it?

16 MS. WILKINSON: I will tell you right now.

17 THE COURT: It's in your first submission.

18 MS. WILKINSON: My first submission, Exhibit H,
19 partial transcript. And I have the full transcript here.

20 THE COURT: I have it.

21 MS. WILKINSON: So I'm going to just read it or
22 at least portions of it, Government Exhibit 1. And, Your
23 Honor, you only have a partial transcript. This is the
24 full one that I previously provided to counsel.

25 BY MS. WILKERSON:

1 Q And it had a standard message from the Bureau of
2 Prisons and then you and Mr. Morales come on line and you
3 were telling him that you were at the pet store because
4 you weren't working because it was Saturday night. Is
5 that fair to say back then you weren't working on Saturday
6 nights?

7 A Yes. I didn't work on Saturday nights.

8 Q And then you were telling him that Alice's car
9 had broke down and wanted to know if she had called you
10 back. And there was a question about George called to see
11 if Sheila wanted to spend the night with Ariana. That's
12 all like family business. Correct?

13 A It is. Yes.

14 Q And so far, there's nothing here yet that
15 mentions Mr. Morales' birthday. Correct?

16 A Correct.

17 Q And I'm going to continue just because I know
18 it's awkward with the transcript, but bear with me. And
19 it says yes, one minute and then they talk, you talk
20 generally. If you're going to -- and this is the actual
21 words that are used.

22 Mr. Morales: So you're going to Baltimore.
23 Then you're not -- and then you say I might, no, I don't
24 know, I don't know. She says yes one minute and no the
25 next minute, you know how. And then Mr. Morales says

1 you're not risking, you're not going to give a chance to
2 go out there, come on. And Ms. Sadler, you say whatever I
3 can go out every night, that doesn't matter, that doesn't
4 make a difference. And Mr. Morales says what -- are you
5 coming up tomorrow or no.

6 And since this call was on September 11th,
7 that would be a visit he wanted you to make on
8 September 12th. Is that a fair inference?

9 A Okay. That's fair.

10 Q So we know the call is on September 11th and
11 Mr. Morales wanted you to come up on September 12th. He's
12 saying tomorrow. Does that sound fair?

13 A Um-hum. Yes.

14 Q And your response is yeah, so you can get that
15 stuff taken care of. And Mr. Morales says all right,
16 well, if you're going to take Shayla in there, then you're
17 straight. And you say okay. Now there's nothing in there
18 about Mr. Morales' birthday. Correct?

19 A Correct.

20 Q And his birthday was a few weeks after that.
21 Correct?

22 A For September 24th. Yes.

23 Q Yes. And you remember telling the judge in your
24 plea agreement that when Mr. Morales says if you're going
25 to take Shayla in there, you're straight, that meant if

1 you came to see the -- if you brought her with you to
2 prison, then the --

3 MR. ZUCKER: Objection.

4 BY MS. WILKERSON:

5 Q -- correctional officers might not look at you
6 so hard if you're bringing the heroin. Is that fair to
7 say.

8 A Yes.

9 Q And in fact, Ms. Sadler, this is the time that
10 Mr. Morales was -- is the right word nagging you to bring
11 the heroin up there?

12 A Yes.

13 Q And he was very insistent for you to bring it up
14 there even though you were scared to do so. Is that fair
15 to say?

16 A Yes.

17 Q So it was Mr. Morales who suggested you bring in
18 Shayla because then --

19 MR. ZUCKER: Objection.

20 BY MS. WILKERSON:

21 Q -- "you're straight." This is his words, not
22 yours?

23 MR. ZUCKER: Objection.

24 THE WITNESS: It was --

25 THE COURT: Wait a minute. Don't answer the

1 question. There's an objection. What's the objection?

2 MR. ZUCKER: The objection is she's misstating
3 the prior testimony. She's misstating what the witness
4 said. The witness never made that statement.

5 THE COURT: Overruled.

6 BY MS. WILKERSON:

7 Q Is it Mr. Morales that says if you're going to
8 take Shayla in there, then you're straight?

9 A Yes. I didn't say it.

10 Q Now you had talked on your direct testimony with
11 Mr. Zucker that you picked up heroin for Mr. Morales on
12 two occasions.

13 A Correct.

14 Q And one time was in May. Yes?

15 A Yes.

16 Q And the other time was in September. Yes?

17 A Yes.

18 Q And it was the September quantity that you had
19 gotten that we had seized from --

20 A Yes.

21 Q -- the search warrant. Correct?

22 A Yes.

23 Q Okay. And it's that quantity that we know how
24 much it weighs because you don't know how much it weighs.

25 A You're right. I don't.

1 Q When you picked up the heroin, it was because
2 Mr. Morales had set it up for you to meet the people that
3 would provide the heroin. Correct?

4 A Yes. They brought it to me.

5 Q Right. You didn't ask for a specific quantity.
6 Correct?

7 A No.

8 Q You didn't have -- you're not the money person.
9 You weren't making money off this. Correct?

10 A Correct.

11 Q He was going to make the money off it. Correct?

12 A Yes.

13 MS. WILKINSON: One second, Your Honor.

14 (Pause.)

15 BY MS. WILKERSON:

16 Q Attached as Exhibit E to -- the government filed
17 a sentencing memorandum with the Court, Ms. Sadler, and
18 there's an Attachment E. It's a letter that Mr. Morales
19 wrote you and you don't have it in front of you. But I'm
20 going to ask you about a paragraph in it and I'm going to
21 read it to you. All right?

22 A Okay.

23 Q Referring to the last paragraph.

24 THE COURT: On the first page or --

25 MS. WILKINSON: On the second page, Your Honor.

1 THE COURT: Second page, last paragraph.

2 MS. WILKINSON: Last paragraph.

3 THE COURT: All right.

4 BY MS. WILKERSON:

5 Q And it says "I guess you were for a few, but now
6 it seems like you're an entirely different book. why?
7 You know I am in the process of getting these lawyers and
8 I need all the help I can get. I know times are hard for
9 everyone and money is tight. I don't want that. But I do
10 need help so I can get the money. I gave Ellen messages
11 to give you. Hopefully she get them right. She said she
12 will help you in always. Before you pack my things with
13 Ellen, put them in plastic bags so nothing gets wet. Then
14 put it into the white storage bin. I hope to see you real
15 soon. And hopefully, my honesty do hurt your feelings --
16 don't hurt your feelings or my honesty doesn't hurt your
17 feelings or something like that."

18 Did you hear me all right reading that
19 letter?

20 A I can hear you.

21 Q Do you remember that letter from Mr. Morales?

22 A Yes.

23 Q Okay. And when he talks about packing my things
24 with Ellen and putting them in plastic bags so nothing
25 gets wet, what was he talking about there?

1 MR. ZUCKER: Objection.

2 THE WITNESS: The drugs.

3 BY MS. WILKERSON:

4 Q The heroin.

5 A Um-hum.

6 Q And he says put it into the white storage bin.

7 what was that about?

8 A The load.

9 MS. WILKINSON: One second. I have nothing
10 further, Your Honor.

11 THE COURT: All right. Any redirect, Mr.
12 Zucker?

13 MR. ZUCKER: Yes. Thank you, judge.

14 REDIRECT EXAMINATION

15 BY MR. ZUCKER:

16 Q The Ellen referred to in that letter is whom?

17 A Jose's sister.

18 Q And did you ever obtain anything from Ellen
19 connected with drugs?

20 A Absolutely not. Absolutely not.

21 Q Did she have anything to do with drugs as far as
22 you know? Ever?

23 A No. I have no knowledge --

24 Q I'm sorry. We couldn't hear you.

25 A No. I have no knowledge of that. No.

1 Q Did she have any involvement?

2 A No.

3 Q Did she participate in any way in any drug
4 transaction with you or anyone else as far as you know?

5 A Absolutely not. Never.

6 Q Now you didn't have contacts with Mr. Morales
7 directly between the time of your plea and I think you
8 said December of 2012?

9 A Yes.

10 Q Okay. But you did have contact via email or he
11 had contact frequently with your daughter, Shayla. Is
12 that correct?

13 A He talked to my daughter on the phone and his
14 letters. Yes.

15 Q And through emails as well.

16 A But Shayla doesn't email. She doesn't know how.

17 Q Okay. Did you assist her with emails to him?

18 A No.

19 Q Okay. And in any way through any of those
20 contacts, did he ever do anything to discourage you from
21 testifying?

22 A No.

23 Q And although you did not have direct contact
24 with Mr. Morales, you had contact with people he was in
25 contact with as far as you know. Other family members and

1 friends. Is that correct?

2 A Yes.

3 Q Did he ever reach out through any of them to
4 your knowledge to ever do anything to dissuade you from
5 testifying?

6 A No.

7 MR. ZUCKER: Moment to consult.

8 (Pause.)

9 MR. ZUCKER: Nothing else at this time. Thank
10 you, Your Honor.

11 MS. WILKINSON: Just a few questions if I might,
12 Your Honor?

13 THE COURT: Go ahead.

14 RE CROSS-EXAMINATION

15 BY MS. WILKINSON:

16 Q Ms. Sadler, I'm going to refer back to your
17 grand jury testimony in June of 2012.

18 A Okay.

19 Q And do you recall me asking you some questions
20 about Ellen during that testimony?

21 A I do.

22 Q Okay. And I'm going to go ahead and read it and
23 just make sure it's accurate here.

24 MR. ZUCKER: Can we get a cite, please?

25 MS. WILKINSON: It's again the same Exhibit B,

1 page 75, Your Honor. Exhibit B to the government's memo.
2 Page 75.

3 MR. ZUCKER: Do you have a page number?

4 THE COURT: 75?

5 MS. WILKINSON: Page 75.

6 MR. ZUCKER: Line, please.

7 MS. WILKINSON: Line 12.

8 BY MS. WILKERSON:

9 Q And I just read you the letter in the grand jury
10 and I said he's referencing Ellen about messages and
11 there's the phrase about putting things in writing --

12 THE COURT: Slow down, please.

13 MS. WILKINSON: I'm sorry, Your Honor.

14 BY MS. WILKERSON:

15 Q And I said question, line 17, "Did Ellen give
16 you any messages about this? And answer: No. He wrote
17 it in the letter and I only knew what he was meaning.
18 Ellen thought from my recollection one time when he was
19 behind the wall. That wasn't a contact visit. But Ellen,
20 I never really saw Ellen at all. Question: This --"

21 A That's true.

22 Q Thank you. "This message that you were
23 purportedly to get from Ellen, are you telling the grand
24 jury you did not get a message from her? Answer: I know
25 that she said rock said white. I think she passed it

1 through though to someone else to give to me. I don't
2 think it directly came from -- tell us about that. I
3 think it was Des she told." Is that correct so far?

4 A That's true.

5 Q And your further answer, "She told somebody to
6 tell me. And I asked you Destiny being your stepdaughter
7 and you said yes, stepdaughter. And my question was so
8 Destiny related a message from Ellen about things having
9 to be in white. And you answered yes." Is that true?

10 A Yes.

11 Q So you got a message from your stepdaughter.
12 How old she was she at the time?

13 A Oh, 18.

14 Q Okay. And the message came from Ellen about the
15 drugs having to be in white. Correct?

16 A Yes. She never said that word.

17 Q She didn't say --

18 A Yes.

19 Q I'm sorry. You never said that word either.
20 Right?

21 A No.

22 Q But we knew what we were all talking about.
23 Correct?

24 A I knew what they were talking about. Yes.

25 Q And you know that that meant put the heroin in

1 white balloons. Answer: Yes. Is that true?

2 A Yes.

3 Q So when you talked earlier about people that you
4 had discussed heroin with, you neglected the conversation
5 and you interrupted me. The Ellen part, yes. That you
6 had with your stepdaughter, Destiny, and you said yes.
7 She never knew anything.

8 A Yes.

9 Q She just knew to say white as well. Question:
10 That Destiny had related to you from Jose's sister, Ellen.
11 And you said yes. Correct?

12 A Yes.

13 MS. WILKINSON: Nothing further, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. ZUCKER:

16 Q Ma'am, Ms. Sadler, you had a conversation with
17 Destiny. Correct?

18 A Yes.

19 Q And the conversation related information.
20 Correct?

21 A Yes.

22 Q You don't know what Destiny's basis for that
23 information was, do you?

24 A Correct.

25 Q Do you know whether Ellen -- to your knowledge

1 did Ellen have anything to do with anything in terms of
2 drugs transportation?

3 A No --

4 Q I'm sorry?

5 A No. No knowledge. No knowledge whatsoever.

6 Q And was it a supposition on the prosecution's
7 part that you agreed with or just accepted --

8 MS. WILKINSON: Objection, Your Honor.

9 THE COURT: Sustained. Rephrase the question.

10 BY MR. ZUCKER:

11 Q At the point you gave this testimony that it was
12 you believed Destiny got the message from Ellen, it was in
13 response to questions from the prosecution. Correct?

14 A Um-hum.

15 Q That that's what they believed had occurred?

16 MS. WILKINSON: Objection to what we believed.

17 THE COURT: Sustained.

18 THE WITNESS: I'm not sure I understand what
19 you're saying.

20 BY MR. ZUCKER:

21 Q Okay. What was your impression of where that
22 suggestion came from that it was actually Ellen who gave
23 Destiny a message? Was that based on --

24 A That Ellen gave Destiny the message.

25 Q I'm sorry?

1 A I told her that the message came from Destiny
2 from Ellen's related third party.

3 Q And what was your basis for believing that it
4 was from Ellen?

5 A She said Ellen told me to tell you. That's it.

6 MR. ZUCKER: Okay. No other questions. Moment
7 to consult.

8 (Pause.)

9 MR. ZUCKER: Thank you.

10 THE COURT: All right. This concludes the
11 testimony of this witness. We will take a five-minute
12 recess.

13 (Recess.)

14 THE COURT: You may continue your examination of
15 the witness.

16 MR. ZUCKER: Thank you, judge.

17 CONTINUED DIRECT EXAMINATION

18 BY MR. ZUCKER:

19 Q When we broke, Mr. Stokes, you were saying that
20 one of the conversations where Mr. Morales said he didn't
21 want Ms. -- what you knew as Terry to testify was in the
22 computer room. Correct?

23 A Um-hum. Yes. I'm sorry.

24 Q Even though I can see you and it's normal, you
25 have to say yes or no for the court reporter.

1 A Okay.

2 Q And you said no one else was present when that
3 conversation occurred. Is that correct?

4 A Correct.

5 Q Okay. Where was the next conversation when you
6 said he didn't want her to testify? Where did that occur?

7 A As I said, he could have been standing on the
8 tier, by a cell.

9 Q Where did you physically recall being when he
10 said it besides the computer room?

11 A Standing on the tier.

12 Q And that would be the tier. I think you were in
13 108. He was in 110 or vice versa.

14 A On the tier meaning not in the cells, but in the
15 common area.

16 Q Within the cell block?

17 A Yes.

18 Q And who else was present when that conversation
19 occurred?

20 A Nobody was ever present when we had these
21 conversations.

22 Q I see. So there's no one that can corroborate
23 any of these conversations ever occurred. Correct?

24 A No.

25 Q Just you?

1 A Yes.

2 Q Now you said that he never expressed a desire to
3 kill Ms. Sadler. He used the term he wanted to get with
4 her. Is that correct?

5 A Yes.

6 Q And how many times did he use the term, I want
7 to get with her?

8 A Several times.

9 Q And you interpreted that to mean kill her. Is
10 that correct?

11 A Yes.

12 Q Okay. Based on what?

13 A That's in our generation I guess it would be
14 sort of like asking a mob to telling you rubbed out or
15 whacked.

16 Q Okay.

17 A So I mean it's equivalent to that. So in our
18 generation, when people use those terms, we know exactly
19 what it means.

20 Q I see. And what generation is that? How old
21 are you?

22 A I'm 40 -- 39.

23 Q I see. So in your generation, someone who's 49
24 says I want to get with her means they want to kill
25 someone?

1 A Yes. We use those terms.

2 Q And you didn't know Mr. Morales on the street?

3 A No.

4 Q And you didn't know -- well, how old is he
5 compared to you?

6 A He's close to my age. He's around my age.

7 Q I see. I see. What else did you discuss with
8 Mr. Morales?

9 A Can you be --

10 MR. CLARKE: Objection, Your Honor, about what
11 else was discussed with Mr. Morales. We're here on the
12 narrow issue as to Ms. Sadler's concerns and what was
13 going to happen with Ms. Sadler. We'd rather not go into
14 other areas of his testimony.

15 THE COURT: What's the relevance of any other
16 areas? Why is that proper?

17 MR. ZUCKER: Testing the relationship, testing
18 credibility. Testing what relationship he had with
19 Mr. Morales.

20 THE COURT: I'll permit the limited additional
21 questioning. Overruled.

22 BY MR. ZUCKER:

23 Q What else did you discuss with Mr. Morales?

24 A I mean can you be specific as to what because we
25 could be talking about football, baseball. What do you

1 mean?

2 Q Discuss sports stuff with him?

3 A Of course.

4 Q Did he discuss with you what he did on the
5 street?

6 A Yes.

7 Q Did he discuss with you -- well, how would you
8 characterize your relationship with him?

9 A We were okay.

10 Q What does that mean, we're okay? Does that mean
11 you weren't hostile with one another?

12 A No. We never had a disagreement or argument.

13 Q Did you consider him a trusted confidant?

14 A Well, I've been doing this for a while. So I
15 never really trust anyone in prison. But like I said, we
16 were okay. We never had any bad feelings towards one
17 another.

18 Q Okay. You said you never trust anyone in
19 prison. Why is that?

20 A Because people can turn on you quick.

21 Q And Mr. Morales was seasoned as well, was he
22 not?

23 A As far as how long he's been incarcerated?

24 Q As far as understanding that people can turn on
25 you in prison?

1 A well, he's told me that things have happened to
2 him. So I guess he should be a little aware of that.

3 Q So he should be a little aware of that based on
4 his life experience. Is that correct?

5 A I would think so. But I guess everybody don't
6 take heed to their life experiences.

7 Q But he trusted you?

8 A I guess so.

9 Q Even though you didn't know each other on the
10 street. Right?

11 A Right.

12 Q Even though you had no history together?

13 A Right.

14 Q Even though he didn't know whether or not you
15 were attempting to cooperate?

16 A Right.

17 Q What did you know about his family? Do you know
18 if he had children?

19 A Yes.

20 Q How many?

21 A I know -- I think it's two daughters and a son I
22 think.

23 Q Do you know -- did he share with you what their
24 ages were and things like that?

25 A I know that his children are a lot younger than

1 mine.

2 Q How old?

3 A Maybe 11, 12, 13, something like that.

4 Q All three?

5 A I don't know. Maybe 10, 11, 12, something like
6 that. I'm not really sure. Something around -- I saw
7 pictures of them, but it's been a while.

8 Q well, did he share with you -- did he discuss
9 with you, other than Terry, whether he had children with
10 other women?

11 A I think he has a child with a woman named
12 Tiffany.

13 Q And what's your basis for that? Is that
14 anything he told you or something else?

15 A No. He told me.

16 Q Now you said that in prison, people -- well, you
17 certainly don't trust many people. Is that correct?

18 A Right.

19 Q And Mr. Morales, being a friend of yours, you
20 knew he was not a fool. Correct?

21 A In terms of -- you talking about school or --

22 Q well, did you consider him an intelligent
23 person? Did you consider him a reasonably intelligent
24 person?

25 A From what I learned from him. Yes.

1 Q And you told us that you don't trust people in
2 prison because they could turn on you and that's generally
3 the way seasoned prisoners regard each other. Isn't that
4 correct?

5 A To a degree, yes.

6 Q They're very careful about whom they trust.
7 Correct?

8 A To a degree, yes.

9 Q Now you're presently serving a life sentence.
10 Correct?

11 A Yes.

12 Q And you are going to serve that life sentence
13 unless something else happens. Correct?

14 A Yes.

15 Q And do you want something -- do you want to
16 serve the rest of your life in prison?

17 A No.

18 Q That's why you're here today. Right?

19 A Yes.

20 Q Well, why are you here today?

21 A Well, I'm here to tell the truth.

22 Q All right. You took information that you claim
23 Mr. Morales gave you in prison. Correct?

24 A Yes.

25 Q And you shared it with law enforcement.

1 Correct?

2 A Yes.

3 Q Why?

4 A Well, first of all, like I said, I'm here to
5 tell the truth and hopefully, maybe something will be done
6 in my behalf. But there's no promises to that.

7 Q But you said you don't want to serve the rest of
8 your life in prison. Right?

9 A No.

10 Q And the only way to avoid serving the rest of
11 your life in prison is if the prosecution asks for you to
12 get a lesser sentence based on cooperation. Correct?

13 A Not just cooperation. I have to be truthful.

14 Q Okay. But the only way out of spending the rest
15 of your life in prison is to cooperate and get the
16 assistance of the prosecution. Correct?

17 A Yes.

18 Q And that's why you're here today. Right?

19 A I'm here to tell the truth.

20 Q But your objective here for yourself is to
21 hopefully avoid spending the rest of your life in prison.
22 Correct?

23 A Hopefully.

24 Q Other than that, you could care less what
25 happens to Mr. Morales. Correct?

1 A I mean if you put it that way. I guess.

2 Q You don't care what happens to him. In order
3 for you to get out of prison, he has to suffer additional
4 criminal prosecution. Then that's not anything that
5 troubles you. You would agree with that?

6 MR. CLARKE: Objection.

7 THE COURT: Sustained.

8 BY MR. ZUCKER:

9 Q And you were -- well, in addition to sharing
10 information, you got some written materials from Mr.
11 Morales. Is that correct?

12 A Written material from Mr. Morales?

13 Q Yeah. He wrote some things down and gave them
14 to you and asked for you to send them outside. Is that --

15 MR. CLARKE: Objection. May we approach, Your
16 Honor?

17 THE COURT: Approach the bench.

18 (Bench conference:)

19 THE COURT: Yes, sir.

20 MR. CLARKE: The question regarding what was
21 transferred out of the prison through Mr. Stokes is a
22 detour into the murder trial, Your Honor, which is what we
23 asked the Court not to allow Mr. Zucker to go.

24 MR. ZUCKER: We're not really concerned about
25 the contents of the material. What we're concerned about

1 is exploring the relationship. This witness is claiming a
2 trusted relationship and a suspicious confidence from
3 Mr. Stokes given their relationship and I think we're
4 allowed to explore that somewhat, to test it.

5 THE COURT: well, what do you anticipate he's
6 going to respond to?

7 MR. ZUCKER: I'm not a hundred percent sure. I
8 think he's going to claim that Mr. Morales trusted him
9 enough to write some materials down that had to do with
10 another case or another incident and transfer them from
11 home and we want to explore that in terms of what the
12 relationship was, how close they were, if there really was
13 this level of trust. We are obviously dubious of it.

14 MR. CLARKE: We are not opposed to asking if he
15 had ever taken notes or comments or anything else out of
16 prison to his family or something to that effect, Your
17 Honor. We can stop it there.

18 MR. ZUCKER: We don't need to go into the
19 contents of it.

20 THE COURT: All right.

21 (In open court:)

22 BY MR. ZUCKER:

23 Q Mr. Stokes, I don't need to tell you to tell me
24 what was written down. But did you transfer something
25 from Mr. Morales to people on the outside?

1 A Yes.

2 Q And without telling us what was written down,
3 just tell us -- well, let's start off with who wrote it
4 down.

5 MR. CLARKE: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: Does that mean I answer?

8 THE COURT: I can't hear you, sir. Speak into
9 the microphone.

10 THE WITNESS: Mr. Morales.

11 BY MR. ZUCKER:

12 Q And so he wrote something down. Were you
13 present when he wrote it?

14 A Standing outside his room.

15 Q And so you saw that. Correct?

16 A Yes.

17 Q And it was something -- he asked you to do
18 something to send to someone. Is that correct? And if
19 not, just tell me what he asked you to do is whatever he
20 wrote down.

21 MR. CLARKE: Objection.

22 THE COURT: Overruled.

23 THE WITNESS: He didn't tell me to send it to
24 someone. He told me to take it with me.

25 BY MR. ZUCKER:

1 Q Okay. And do what? what did he ask you to do
2 with it?

3 A He told me to check and see if someone was in
4 the jail that I was at when I got there.

5 Q What did he ask you to do with the piece of
6 paper he wrote on and handed you?

7 A You said what did he ask me to do with the
8 paper?

9 Q Yeah. The document that he wrote --

10 A Right.

11 Q -- he gave to you --

12 A Um-hum.

13 Q -- while you were present and he wrote it?

14 A Right.

15 Q What did he ask you to do with it?

16 A He told me to take it with me and to see if that
17 person, the name that was on it, to see if the person was
18 present in the jail when I got there.

19 Q And which jail was that?

20 A CTF.

21 Q Anything else he asked you to do with it?

22 A Well, it was coded. So I had to decipher it I
23 guess.

24 Q Now at this point, it's become public knowledge
25 that you were cooperating against Mr. Morales. Correct?

1 A Yes. He told everyone in the jail that.

2 Q And so your ability to get information from
3 anyone else is diminimous. You know what I mean by that.
4 Right? The likelihood that other people in your shared
5 community of incarcerated persons will share information
6 with you is virtually nonexistent.

7 MR. CLARKE: Objection as to what other
8 prisoners might say or may not say, Your Honor.

9 THE COURT: Sustained.

10 BY MR. CLARKE:

11 Q When I say someone has been burned as a
12 cooperator, do you understand that comment, what that
13 means?

14 A Yes.

15 Q What does it mean?

16 A It means that like you previously said, that no
17 one would probably want to talk to me about certain
18 things.

19 Q And so your ability to get out of prison,
20 spending the rest of your life in prison is dependent on
21 your testimony against Mr. Morales. Right?

22 THE COURT: I think we've already covered that
23 territory.

24 MR. CLARKE: Thank you, Your Honor.

25 THE COURT: Sustained.

1 BY MR. ZUCKER:

2 Q Well, you have no other way to obtain your
3 freedom other than cooperating with Mr. Morales. Isn't
4 that right?

5 MR. CLARKE: Objection.

6 THE COURT: Sustained.

7 BY MR. ZUCKER:

8 Q Are you presently providing information about
9 anyone else --

10 MR. CLARKE: Objection.

11 THE COURT: Sustained.

12 MR. ZUCKER: If I may have a moment to consult?

13 (Pause.)

14 MR. ZUCKER: No other questions at this time.

15 Thank you.

16 THE COURT: Thank you. Cross.

17 MR. CLARKE: So the record is clear, Your Honor,
18 the government, of course, has already provided the Court
19 with Exhibit G, which is the partial transcript of
20 Mr. Stokes' testimony.

21 THE COURT: Let me --

22 MR. CLARKE: That's it.

23 THE COURT: Is it G?

24 MR. CLARKE: Yes.

25 THE COURT: I got it.

1 MR. CLARKE: An important part of the record,
2 Your Honor.

3 CROSS-EXAMINATION

4 BY MR. CLARKE:

5 Q Good morning, Mr. Stokes.

6 A Hello.

7 Q A couple of dates. First of all, you testified
8 in front of the grand jury on September the 11th of 2012.
9 Is that about right?

10 A I think so. Yes.

11 Q All right. And you've already testified here
12 today that you were sent to Allenwood and at the time that
13 you arrived, Mr. Morales wasn't there because he was in
14 Baltimore at a hearing or something. Correct?

15 A Correct.

16 Q All right. And then he came back and so that
17 would have put it around May of 2012 when you met
18 Mr. Morales. Correct?

19 A Correct.

20 Q All right. And you've testified that shortly
21 after you two met each other, that Mr. Morales chose to be
22 on the same tier or cell block as you. Correct?

23 A Correct.

24 Q And that cell block was called Block 1-A?

25 A Yes.

1 Q And remind His Honor how far away your two cells
2 were?

3 A I was in Cell 8. He was in Cell 10.

4 Q So two doors away.

5 A Yes.

6 Q And can you tell us how many hours a day would
7 it be that you two would be together outside of your
8 cells?

9 A Well, basically, from right after -- well, the
10 doors are open around 5:30. So right after breakfast to
11 all day until we're locked in at night. We would walk to
12 work together. We would work together. We'd walk back to
13 work together. We watch T.V. together. We eat together.
14 We walk to dinner together. We sit and talk. It was all
15 day.

16 Q Now you've testified that he brought up the name
17 of his co-defendant, Terry Sadler. Correct?

18 A Yes.

19 Q Had you ever met her before?

20 A No.

21 Q Prior to meeting Mr. Morales, had you ever heard
22 her name mentioned by anybody?

23 A No.

24 Q And without going into too much detail, can you
25 just tell us what if anything he said about her

1 involvement in the USP Canaan case?

2 A That she was just his co-defendant. She was the
3 one bringing the heroin to the jail.

4 Q Okay. And did he say approximately how many
5 times that happened?

6 A Right offhand, I don't remember how many times
7 it was.

8 Q Was it more than once?

9 A I think so. Yes.

10 Q And did he say -- strike that. Did he say if
11 she was cooperating? I think you already testified that
12 he did, did he not?

13 A Yes.

14 Q Did he say how he learned that she was
15 cooperating?

16 A He said his lawyer notified him of that.

17 Q You've testified that Mr. Morales said that he
18 wanted to get with her, her meaning Ms. Sadler.

19 A Yes.

20 Q You've already testified that you understood
21 that to mean that he wanted someone to kill her. Is that
22 correct?

23 A Yes.

24 Q Did he specifically ask you for help in that
25 regard? In other words, did he ask you to help him get to

1 her?

2 A Yes.

3 Q And what was your response?

4 A I told him I didn't know anyone who would be
5 able to do that.

6 Q And why not?

7 A Because everybody I know works and, you know,
8 family guys at this point.

9 Q And how long had you been in prison?

10 A Approximately maybe 15 years.

11 Q And so you didn't nobody on the outside, at
12 least that's what you told him.

13 A Not that would do anything like that. No.

14 Q Did Mr. Morales mention any details about what
15 kind of information the authorities, the prosecutors
16 wanted from Ms. Sadler that could help with the USP Canaan
17 case?

18 A I know that he mentioned a conversation on I
19 think it was a wiretap. He and Ms. Terry was talking and
20 he mentioned getting some white bins. So I think that she
21 was going to decipher that to mean not white bins. They
22 were condoms from like Target or Wal-Mart to actually
23 package the drugs in and smuggle them into the jail.

24 Q So she was to help the authorities understand
25 what he meant by white bins?

1 A Yes.

2 Q And that's what he told you, Mr. Morales?

3 A Yes.

4 Q Did Mr. Morales mention when he wanted someone
5 to get with her?

6 A He was trying to get someone to get with her
7 before her August date to turn herself into prison.

8 Q So was it your understanding from him that
9 Ms. Sadler had already pled guilty and had already been
10 sentenced?

11 A Yes. He had already told me if I'm not mistaken
12 that she received 18 months and she had to turn herself in
13 at that time by August.

14 Q By August of 2012?

15 A Yes.

16 Q And what did you understand him to mean that he
17 had to get her before August?

18 A To get her killed before she turned herself in
19 because she wouldn't be available after that.

20 Q He couldn't get to her.

21 A He couldn't get to her.

22 Q Did he discuss any details with you about how
23 someone might be able to get to her on the outside?

24 A Well, he told me that -- well, he knew I was
25 familiar with the Dundalk area. He told me that she lived

1 in the Dundalk area and that a good time to get with her
2 would be I think it was at nighttime because he told me
3 that her husband works at the docks or at the Port of
4 Baltimore, something like that.

5 Q And what time of day? Did he mention what time
6 of --

7 A At nighttime. It was at nighttime.

8 Q Let me finish my question.

9 A Okay. I'm sorry.

10 Q What time of day did he say that he worked?

11 A At nighttime.

12 Q All right. And did he make any reference to
13 West Virginia?

14 A Several. He said that -- he told me when Terry
15 had went down there to visit, he told me that's when she
16 would be turning herself into. That her parents lived
17 down there, her mom and that I think their daughter would
18 be staying down there while Terry was incarcerated.

19 Q Did he mention a Plan B, an alternative plan?
20 If he couldn't find someone to get to her on the outside,
21 did he have another idea?

22 A I remember him mentioning trying to file some
23 paperwork that would potentially push his February trial
24 date back. And if that was successful, Terry would still
25 be in prison and because he assumed that she would get out

1 in February after she testified. And at that point from
2 August to February would be six months. So the paperwork
3 he filed, like I said, if it was successful would push it
4 back further, that court date, maybe beyond or closer to
5 her 18-month period and then she wouldn't be motivated to
6 testify because she would be ready to get released anyway.

7 Q During your discussions with Mr. Morales, did
8 you ever discuss with him why you were in prison?

9 A Yes.

10 Q And did he know what your sentence was?

11 A Yes.

12 Q So he understood you had been convicted of
13 murder and you were doing a life sentence for that?

14 A Yes.

15 MR. CLARKE: No further questions, Your Honor.

16 THE COURT: All right. Redirect.

17 REDIRECT EXAMINATION

18 BY MR. ZUCKER:

19 Q You said that Mr. Morales asked you if you could
20 help arrange for the murder?

21 A Yes.

22 Q Okay. Did he ask anyone else?

23 A I don't know.

24 Q Do you know of his ever asking anyone else?

25 A No.

1 Q You weren't present whenever he asked anyone
2 else. Right?

3 A Yes.

4 Q And he never communicated to you that he had
5 ever asked anyone else. Right?

6 A No.

7 Q So the only person he ever asked to assist in
8 this plan to kill a witness was you. Correct?

9 MR. CLARKE: Objection.

10 THE WITNESS: That I know of.

11 MR. CLARKE: Objection.

12 THE COURT: Wait, wait. Hold on. Don't answer
13 the question.

14 THE WITNESS: Oh, I'm sorry.

15 THE COURT: Let me hear the objection.

16 MR. CLARKE: The objection was, Your Honor, if
17 the answers to the question is leading up to this final
18 question was whether or not he knew if Morales had asked
19 anybody else and he repeatedly said no, he did not. And
20 then Mr. Zucker is then asking him to conclude that nobody
21 was ever asked. That he was the only one ever asked.

22 THE COURT: Objection sustained.

23 BY MR. ZUCKER:

24 Q As far as you know?

25 MR. CLARKE: Objection.

1 THE COURT: Let him get a complete question out.

2 BY MR. ZUCKER:

3 Q As far as you know, he never asked anyone
4 besides you?

5 A No.

6 Q And this conversation where he supposedly asked
7 you if you could help arrange the murder, there's, of
8 course, no one else who was present when that conversation
9 occurred, was there?

10 A No.

11 Q So there's no one to corroborate any of this, is
12 there?

13 A No.

14 Q As far as you know?

15 A No.

16 Q And this despite the fact that you and he were
17 incarcerated with men he had known for years from the
18 street. Right?

19 A He never mentioned not one person that he was
20 incarcerated for years with in the prison?

21 Q When you met him, he was with other guys from
22 Baltimore that he was friendly with. Correct?

23 A Yes.

24 Q People he had relationships with that went
25 beyond -- that preceded you being incarcerated together.

1 Right?

2 A Yes.

3 Q People he knew from the streets. Right?

4 A No.

5 Q Well, where did he know these other people from?

6 If you know?

7 A From Allenwood USP.

8 Q All right. Didn't you say that when you first
9 met him, you and he were both talking with guys from
10 Baltimore?

11 A Yes.

12 Q And you named about seven individuals by
13 nicknames. Right?

14 A Right.

15 Q And your testimony is to your knowledge, you're
16 certain that Mr. Morales didn't know any of these people
17 except from incarceration?

18 A He never mentioned knowing anyone from the
19 street.

20 MR. ZUCKER: Moment to consult.

21 (Pause.)

22 BY MR. ZUCKER:

23 Q But the men he was talking with when you first
24 met him and I think you mentioned Ty, Jay, Rock, I.G.,
25 Speedy, Jeremy and Mush, some of these were men that he

1 had known for many years as far as you knew. Is that
2 correct? Whether it was from the street or from
3 incarceration.

4 A No.

5 Q They were all newly acquaintances like you?

6 A Yes.

7 Q And you're sure of that. Right?

8 A From my understanding, Mr. Morales didn't meet
9 any of these guys until he reached --

10 Q I'm sorry. Repeat the -- I couldn't hear you.

11 A He did not meet any of these guys from my
12 knowledge until he arrived at Allenwood USP.

13 Q So you didn't know him from prior incarceration
14 and he arrived at Allenwood after you did? Sometime in
15 about April or May of 2010?

16 A Well, he knew these guys -- he was actually in
17 Allenwood before me and then he left. So he knew the guys
18 for a few months I guess prior until I got there. Then he
19 left. But he didn't know them from the street.

20 Q Okay. But they were people he knew much longer
21 than you?

22 A Well, I guess a few months. Yeah.

23 Q And one of them in fact was one of his callees.
24 Right. Jay?

25 A He was not callees with Jay when I was there.

1 Q Do you know if they were cellmates in the past?

2 A Yes.

3 Q They were?

4 A But not when I was there.

5 Q Understood. Understood. So this was somebody
6 he had known for years, been a cellmate with, basically
7 had a much more extensive relationship than he had with
8 you?

9 A If you say so.

10 Q Well, that's not --

11 A I don't know the nature of their relationship.

12 Q At least longer in duration?

13 A Longer in duration.

14 Q How many times have you met with the prosecution
15 in preparation for your testimony here today?

16 A Once.

17 Q And when was that?

18 A Monday.

19 Q And for how long?

20 A Forty-five minutes.

21 Q And prior to that, that was certainly not the
22 first time you met with the prosecutors. Is that correct?

23 A No.

24 Q And how many times have you met with them where
25 you've gone over the facts that you've testified to today?

1 A Monday and then I only met them one other time
2 and that was the day of the grand jury. That was it.

3 Q So the first time you ever met with the
4 prosecution and by the prosecutors, I mean the prosecutors
5 here or anyone else from the U.S. Attorney's Office was
6 the day you went in the grand jury?

7 A That was the first time and then Monday.

8 Q So those are the only two times you've met with
9 either Ms. Wilkinson or Mr. Clarke or anyone else in their
10 office in connection with this case?

11 A Yes. It was Mr. Clarke.

12 Q Not Ms. Wilkinson. Just Mr. Clarke.

13 A Um-hum. Yes.

14 Q And that was at the grand jury?

15 A Yes.

16 Q And then the only other time you met with him
17 was this past Monday?

18 A Yes.

19 Q Did you meet with -- aside from you're meeting
20 with the prosecutors, did you have other dates when you
21 met with agents?

22 A Yes.

23 Q And when was that and whom?

24 A The first time was July.

25 Q of?

1 A 2012.

2 Q With?

3 A Mr. Lam and if I'm not mistaken, Mr. O'Keefe.

4 Q The gentleman in the courtroom?

5 A No.

6 Q I apologize.

7 MS. WILKINSON: For the record, it's not

8 Mr. O'Keefe.

9 BY MR. ZUCKER

10 Q I apologize. I got the names confused. Other
11 than that in July of 2012, when else did you meet with
12 agents in connection with your testimony about
13 Mr. Morales?

14 A Well, I think, you know -- well, the agents came
15 to get me when they brought me to see to Mr. Marty. So
16 you know --

17 Q For the record, Marty is Mr. Clarke?

18 A Mr. Clarke.

19 Q The day of the grand jury?

20 A Yes.

21 Q Okay. So that's two times?

22 A And one other time. They just brought me in and
23 gave me an update. That was it.

24 Q And when and where was that if you recall?

25 A It was in October of 2012. But and it wasn't --

1 I think it was at the courthouse. Lombard Street,
2 downtown.

3 Q Baltimore?

4 A Yes.

5 MR. ZUCKER: Moment to consult, please, judge.

6 (Pause.)

7 BY MR. ZUCKER:

8 Q Do you recall when in July -- actually, you said
9 it was the day of your grand jury testimony?

10 A No. I said the first time was in July was when
11 I met the agents. The grand jury I think was in
12 September.

13 Q Do you recall when in July you met with them?

14 A The exact date?

15 Q Yes. Beginning, end?

16 A I would think closer to the end.

17 Q And at that point, you had known Mr. Morales for
18 all of approximately two months?

19 A I guess two months and some change. Maybe four
20 months.

21 Q Well, I thought you said you met him in May.

22 A I think it was something like that, May, June,
23 July. You're right.

24 Q So two months tops. Less than three months you
25 knew him. Right?

1 A Yes.

2 Q And how long had you -- well, you knew him --
3 you met him the first time in late April, sometime in May.
4 But it was about two weeks after that you said you
5 started -- became close because you were on the same cell
6 block. Right?

7 A Yes.

8 Q Okay. So it could have been no more than six or
9 eight weeks when he moved into the cell block. Right?

10 A Yes.

11 Q And it was only once he moved into the cell
12 block that you -- how long did you start working together
13 before -- well, when did you start working together? How
14 long after he moved into the cell block?

15 A I can't even tell you exactly when. But I know
16 we started the exact same day and we were assigned to the
17 exact same station, the exact same area.

18 Q You were making chairs together. Right?

19 A Yes.

20 Q And that's when you started to spend time
21 together?

22 A Well, we started spending time together on the
23 block and then, you know, after that, we started working
24 together.

25 Q I see. And your testimony is that you had --

1 you walked to all meals together and sat together at all
2 meals?

3 A Yes.

4 Q And you watched T.V. together?

5 A Yes.

6 Q And you worked together whatever the working
7 hours were. Right?

8 A 7:30 to 3:00, 2:45.

9 Q And when you worked at that work station, there
10 were other workers there as well, were there not?

11 A Doing their jobs. Yes.

12 Q Just like you and he. Right?

13 A Yes.

14 Q So they were present if there were conversations
15 between the two of you. Right?

16 A Not specifically, no.

17 Q well, these conversations where he's made
18 these -- supposedly asked you to kill Ms. Sadler, where
19 did that occur?

20 MR. CLARKE: Objection. We covered this, Your
21 Honor. When and where the conversation took place and --

22 THE COURT: Sustained.

23 MR. ZUCKER: Actually, judge, we went over not
24 that specific conversation. That only came out as a
25 result of cross-examination. Not correct.

1 THE COURT: I think we covered it. Sustained.

2 BY MR. ZUCKER:

3 Q During these weeks that you knew Mr. Morales
4 before coming to testify against him or before meeting
5 with agents about him, was he on the unit the whole time
6 with you?

7 A Can you please repeat that?

8 Q Sure. You told us that it was sometime in July
9 that you first met with agents and shared this information
10 about Mr. Morales. Correct?

11 A Yes.

12 Q And you told us that you met him sometime at the
13 end of April, but it was approximately two weeks later
14 that he came to the unit.

15 A Something like that. Right.

16 Q Between the time he came to the unit and you met
17 with those agents during that six or eight-week period,
18 was he on the unit with you the whole time?

19 A Yes.

20 Q Okay. So he was never on lockdown?

21 A He was in lockup.

22 Q He was in lockdown. Right?

23 A We went to lockup.

24 Q And when he was locked down, certainly, none of
25 these conversations occurred when he was in lockdown.

1 Right?

2 A No.

3 MR. ZUCKER: Thank you.

4 THE COURT: All right.

5 MR. CLARKE: If I may? Just a couple, Your
6 Honor.

7 THE COURT: Just a couple.

8 MR. CLARKE: Yes.

9 RECROSS-EXAMINATION

10 BY MR. CLARKE:

11 Q What was your understanding of what facility
12 Mr. Morales was in before he arrived at Allenwood?

13 A USP Canaan in Pennsylvania.

14 Q Where the allegations of the drug smuggling took
15 place?

16 A Yes.

17 Q So he was transferred from USP Canaan to
18 Allenwood. That's your understanding?

19 A Yes.

20 Q And can you tell us what your understanding was
21 of how long he had been at Allenwood before you arrived?

22 A I can't specifically say how long. It wasn't
23 that long. He wasn't there for a very long time.

24 Q We're talking just a matter of months?

25 A If I remember correctly, yes.

1 Q You testified you all cooked together. What
2 does that mean exactly?

3 A Well, we have a microwave. We go to the store
4 and buy food and cook it.

5 Q In the microwave?

6 A Yes.

7 MR. CLARKE: All right. No other questions,
8 Your Honor.

9 THE COURT: All right. The witness may step
10 down. Thank you very much. Any additional witnesses?

11 MR. PROCTOR: No, sir.

12 THE COURT: From the government?

13 MS. WILKINSON: No, sir.

14 THE COURT: And for the defense? You're not
15 going to call that witness that --

16 MR. PROCTOR: That's correct. I told her at the
17 break and she's in the courtroom. We're not calling her.

18 THE COURT: Okay. Have I heard all the
19 testimony now?

20 MR. PROCTOR: Yes, you have.

21 THE COURT: All right. Now let's pick up where
22 we left off with regard to the presentence report and the
23 adjustments and so forth. As a result of the testimony
24 that's been heard today, what is the defense's position
25 with respect to the factual accuracy of the recitation of

1 the facts of this case contained in paragraphs 7 through
2 21 of the presentence report?

3 MR. PROCTOR: Well, if we want to take them one
4 at a time, judge?

5 THE COURT: Let's take them one at a time.

6 MR. PROCTOR: The --

7 THE COURT: The first one with any factual
8 content is 9. That's not disputed, is it?

9 MR. PROCTOR: Hang on a second until I --

10 THE COURT: It's the bottom of page 2 of the
11 PSR.

12 MR. PROCTOR: Paragraph 9 is not disputed.

13 THE COURT: Okay. Paragraph 10?

14 MR. PROCTOR: Not disputed.

15 THE COURT: Paragraph 11?

16 MR. PROCTOR: Not disputed.

17 THE COURT: 12?

18 MR. PROCTOR: No problem there.

19 THE COURT: 13?

20 MR. PROCTOR: No problem.

21 THE COURT: 14?

22 MR. PROCTOR: I don't have a problem with that.

23 THE COURT: 15?

24 MR. PROCTOR: That would be the dispute
25 regarding if you're going to take the child in there, then

1 you're straight, which you heard testimony on --

2 THE COURT: Well, is there -- if I understand
3 what you're saying? You're not disputing that the
4 statement was made. You're disputing what inferences I
5 should draw from that statement --

6 MR. PROCTOR: Yes, sir.

7 THE COURT: -- as to whether that means I'll
8 have a good birthday or you'll be able to get through
9 security easier because you got a kid in a baby carriage.

10 MR. PROCTOR: Correct.

11 THE COURT: And you dispute that I should infer
12 that it would be easier for her to get in to the prison
13 with the drugs if she had a baby and a baby carriage.

14 MR. PROCTOR: That somehow the child was -- you
15 know, that that --

16 THE COURT: All right. Let me hear the
17 government's response.

18 MS. WILKINSON: Your Honor, I think Ms. Sadler
19 makes it abundantly clear. First of all, she accepted
20 responsibility unlike Mr. Morales for that statement. She
21 understood it from Mr. Morales. This was September 11th.
22 She was supposed to come up September 12th. This is when
23 they were in the heat of discussing the heroin coming up
24 in there. His birthday wasn't for two weeks away. The
25 transcript shows no mention of her birthday. In fact,

1 Ms. Morales when she had come and had transported the
2 heroin to him back in May, the child was present during
3 that visit, too. I just think this is a, you know, by a
4 preponderance of the evidence this is clearly --

5 THE COURT: Well, I conclude by a preponderance
6 of the evidence that what's contained in paragraph 15 is
7 correct. And that when he made the statement if you are
8 going to take the child and then you're straight, he's
9 clearly referring to the ease and facility of getting the
10 drugs into the institution when they are brought in by a
11 woman with a baby and a baby carriage. So I conclude that
12 that is factually correct and I find that by preponderance
13 of the evidence as to paragraph 15.

14 MR. PROCTOR: I'm not quarreling with it. What
15 wakes me up in the middle of the night, judge, is an
16 appeals court saying I failed to preserve something. So
17 everything you find that I object to, can you just find
18 that it's preserved for appellate review?

19 THE COURT: Yes. It's preserved.

20 MS. WILKINSON: And just to make it clear, it
21 was a minor child. But I think she was probably 6 at the
22 time. Maybe not in a baby carriage. But a minor child.

23 THE COURT: Bringing a child to see him?

24 MS. WILKINSON: Yes.

25 THE COURT: No. I remember not only from this

1 case, but from Ms. Sadler's case, multiple times I've been
2 exposed to the knowledge that he urged her to bring a
3 child with her. And you take the child, then you're
4 straight and I clearly infer from that reasonably I
5 believe that he was not referring to making a nicer
6 birthday, but rather the introduction of drugs into the
7 prison. So that's what I find with regard to paragraph
8 15. Your objection is overruled. How about paragraph 16?

9 MR. PROCTOR: No problem there, sir.

10 THE COURT: Okay. Paragraph 17?

11 MR. PROCTOR: Yes. We object to the 28 grams.
12 It is undisputed that the search of the house -- I think
13 it was 13.1 grams was recovered.

14 MS. WILKINSON: .6.

15 MR. PROCTOR: 13.6 was recovered and Ms.
16 Sadler's testimony was the first one was a little smaller.
17 In reviewing the case law this morning and I wrote it down
18 somewhere, U.S. versus Sepulveda, which is 15 F.3rd 1161,
19 the court should err on the side of caution on drug
20 quantity. So if the testimony was 13.6 the second time,
21 that's undisputed and it was a little smaller the first
22 time, I don't see how we can extrapolate 28 grams from
23 that, Your Honor.

24 THE COURT: All right. Ms. Wilkinson?

25 MS. WILKINSON: Yes, Your Honor. One moment,

1 please.

2 (Pause.)

3 MS. WILKINSON: Your Honor, the government's
4 position is set forth in our sentencing memorandum. It is
5 true that Ms. Sadler's testimony is an estimate of what
6 was the initial quantity that she obtained at the request
7 of Mr. Morales and we only have the second quantity to
8 talk about estimating the amount of drugs that she
9 personally was involved and with Mr. Morales. But we
10 can't forget the other evidence in this case. And as set
11 forth in Exhibit C to our sentencing memorandum, another
12 female who recorded a long conversation with Mr. Morales
13 also discussed the importation of heroin directly with
14 him. And because this wasn't on the phone, this was a
15 very explicit conversation and I trust the Court has had a
16 chance to read it. But primarily it talks at page -- I
17 apologize. The pages aren't numbered, Your Honor. But
18 one, two, three, four. Page 5 at the top --

19 THE COURT: Wait a minute.

20 MS. WILKINSON: -- of Exhibit C.

21 THE COURT: Okay. And where it says Ashley from
22 Columbia?

23 MS. WILKINSON: Hold on. I'm sorry. Page 8,
24 Your Honor.

25 THE COURT: Page 8.

1 MS. WILKINSON: And if you --

2 THE COURT: Wait a minute. What's the first
3 word at the beginning of the page? Each gram is a hundred
4 dollars?

5 MS. WILKINSON: Right. Exactly. And if you
6 look back -- actually, you know, if you look back, Your
7 Honor, the conversation -- I'm sorry. I apologize. The
8 pages aren't numbered. If you look on page 6, it's clear
9 where it's talking from male number one, which is
10 Mr. Morales. The female is participant number 2. And
11 what Mr. Morales says halfway down the page on page 6,
12 tell "Dan, I need you to get in touch with him no matter
13 what in order for this work out. Dan knows who's selling
14 heroin and raw --"

15 THE COURT: Read a little slower.

16 MS. WILKINSON: When I read, I read too fast. I
17 apologize.

18 THE COURT: I'm with you where it says listen,
19 tell Dan. I'm reading right there.

20 MS. WILKINSON: Right. Remember that heroin and
21 raw. It's got to be raw. And then we continue to the
22 next page when he starts talking about how to get it in
23 and he talks about taking two grams at a time and how much
24 money they're going to make. And then when you go to the
25 top of page 8, he talks about each gram being about a

1 hundred dollars. So if there's like four or five in
2 there, if you do a couple of different moves, that's what
3 every week is what you'll get. And then he says I got my
4 sister, Ellen, to do it once. And then he talks about how
5 she's going to get each one or two grams in. If you can
6 look, it's really quite explicit, Your Honor, in this
7 recorded conversation with Mr. Morales. And the
8 government's argument here is that we know how much we had
9 from Ms. Sadler and then we extrapolate from that his
10 conversations here as I've set forth in our sentencing
11 memorandum with a hundred dollars a gram. And from Ellen
12 and from Female Number 2 who is discussed in this
13 transcript, it's very clear they were talking about at
14 least eight grams, if not more. Overall, when you add the
15 Ellen drugs, the attempted drugs with Female Number 2 and
16 the two occasions with Ms. Sadler, you clearly get the
17 drug quantity by a preponderance of the evidence as set
18 forth in our sentencing memorandum, Your Honor.

19 THE COURT: All right. With respect to the
20 dispute as to the quantity contained in paragraph 17 on
21 page 4 of the presentence report where the report writer
22 reports on the basis of what was provided to the
23 government, the 28 grams, I conclude by a preponderance of
24 the evidence that is fully supported by the evidence for
25 the reasons just articulated by Ms. Wilkinson. So I will

1 make that -- your objection is noted and overruled.

2 Paragraph 18?

3 MR. PROCTOR: I'm happy to short circuit it. I
4 don't believe there are any further objections to the
5 statement of facts. I believe the remaining objection
6 would be to acceptance of -- well, not objection. The
7 remaining dispute regarding the guidelines would be
8 whether acceptance of responsibility is merited.

9 THE COURT: Okay. All right. Well, are there
10 any other aspects of the presentence report other than the
11 factual narrative that we've just gone through from
12 paragraph 7 through 21 that are disputed?

13 MR. PROCTOR: No, sir.

14 THE COURT: Okay. All right. Well, I will,
15 therefore, adopt the contents of the presentence report in
16 its entirety as my findings of fact for purposes of
17 sentencing. Now let's go to the disputed quantities.

18 MS. WILKINSON: Your Honor, one of the -- I just
19 want to make clear for the record the government is
20 objecting to an adjustment for acceptance of
21 responsibility.

22 THE COURT: I'm going to go through each and
23 every --

24 MS. WILKINSON: Very well. Thank you, Your
25 Honor.

1 THE COURT: I'm going to do the building blocks
2 of the offense level now. Okay.

3 MS. WILKINSON: Thank you, Your Honor.

4 THE COURT: Let's start with paragraph 26 on
5 page 5 where the presentence report author recommends that
6 I find that the drug quantity would equate to a base
7 offense level of 20. I believe this is essentially more
8 of the same dispute we were just talking about on the drug
9 quantity. Correct?

10 MR. PROCTOR: Well, it's a little wider in that
11 the previous one stated that you find by a preponderance
12 that 28 grams was attributable to Mr. Morales' dealing
13 with Ms. Sadler. But then we have, you know, yet more
14 conjecture regarding the eight grams attributed to
15 Mr. Morales' sister, Ellen. The grand jury didn't indict
16 Ellen. There's no finding by a preponderance that she was
17 involved in any drug conspiracy there. The government
18 hasn't adduced any phone calls with anyone saying is Ellen
19 coming up and certainly, they have every phone call made
20 at Canaan and Allenwood. And for that matter, judge, you
21 don't even have before you a visitation log showing that
22 Ms. Rewis even visited. So I told my kids last night I'm
23 going to throw a hundred mile an hour fast ball by them
24 when we're playing baseball in the backyard. That don't
25 make it so. Why Mr. Morales said that, whether it was to

1 give Ms. Sadler a level of comfort that she would not be
2 discovered, we don't know. But certainly, there's no
3 basis to attribute those eight grams I don't believe and I
4 would object to the Court finding anything additional
5 beyond the 28 grams it's already found.

6 THE COURT: All right.

7 MS. WILKINSON: Your Honor, two things. First
8 of all, again counsel have ignored the heroin conversation
9 with Female Number 2 when Mr. Morales is talking about an
10 ongoing effort to bring -- have another female bring
11 heroin into the institution. It's as clear as can be that
12 he wanted her to do it on an ongoing basis. And at the
13 very least, they're talking about at least one or two
14 other transactions where we're talking about eight grams
15 each. And you can look at it from the amount of money
16 that Mr. Morales discusses that he is going to make off of
17 Female Number 2 bringing the heroin in. That's putting
18 Ellen aside. But putting Ellen also in -- it's not just
19 Ms. Sadler who puts Ellen in this. Mr. Morales tells
20 (sealed) -- strike that, Your Honor, and move to seal that
21 portion of it, although counsel know who Female Number 2
22 is, that she was also involved one time bringing heroin
23 in. And he writes and in a letter that he was providing a
24 message to Ms. Sadler to it is all self-corroborating,
25 Your Honor, and there's no evidence other than that

1 Mr. Morales was involved in the attempt and the actual
2 effort to bring more than 40 grams of heroin equivalent
3 into USP Canaan and this is not even taking into
4 consideration the marijuana activity that he was involved
5 in.

6 THE COURT: All right. I conclude that a base
7 offense level has been appropriately assessed as being 20
8 on the basis that just stated by the government.

9 Essentially we include not only the amounts involving
10 Ms. Sadler, but also was it Female Number 2, the number
11 you were giving to it? But it's clear to me that the
12 criminal activity did involve at least 56 grams of heroin
13 and we also had the evidence of 5.3 grams of -- pounds of
14 marijuana. So I conclude that based upon the drug
15 quantity table, it's properly assessed as 20. That's my
16 determination. The objection is overruled.

17 All right. Was there an objection to paragraph
18 27?

19 MR. PROCTOR: No, sir.

20 THE COURT: All right. That will be applied.
21 Paragraph 28. The government contends the presentence
22 author did not make this adjustment. That the offense
23 level should be enhanced by two levels because of a
24 credible threat to use violence or directing the use of
25 violence. And there was not sufficient evidence for the

1 probation officer to recommend that. I assume the defense
2 is happy with that. The government is not. So let me
3 hear from the government first on that.

4 MS. WILKINSON: Yes, Your Honor. We actually
5 wrote a letter to Ms. Brewster on March 28, 2013 which is
6 part of the record, indicating why we had not provided
7 information at first with regard to Mr. Stokes' testimony.
8 A lot of it has to do with the nature of the other case.
9 That this is a murder for hire defendant and we were very
10 concerned about witness security issues. Having said
11 that, given the severity of this matter and what
12 Mr. Morales is facing, we made the decision to call
13 Mr. Stokes for the small portion of his, what will be his
14 testimony in this proceeding with regard to the threat to
15 Ms. Sadler.

16 I will say, Your Honor, we took that threat
17 extremely serious and one of reasons is because Mr. Stokes
18 brought it to us voluntarily. He brought the information
19 to us. He had information. Doesn't know Ms. Sadler. Had
20 no reason to know any of the personal details of her life,
21 when she was surrendering, what her sentence was, what her
22 husband did for a living, the area that they lived in
23 Dundalk. All of those things are quite chilling when they
24 come out of a convicted murderer's mouth that Mr. Morales
25 had approached about making sure he could get to or get

1 with -- I forget the exact phrase -- Ms. Sadler.

2 Most importantly, Your Honor, I make the proffer
3 now to the Court. Ms. Cresta Savage obviously could not
4 be here. She was the attorney for Ms. Sadler and
5 continues to be. I understand her father is ill. But we
6 immediately advised her of the threat to Ms. Sadler.
7 Detective Lam had gone out, given her a debriefing about
8 everything that happened. She was comfortable that Ms.
9 Sadler hadn't had any contact with Mr. Morales at the time
10 and was getting ready to surrender. Had indicated that,
11 too. Had let Ms. Sadler know about that. And this was
12 all, of course, right around the time she was getting
13 ready to surrender to West Virginia.

14 We submit that Mr. Stokes is a very credible
15 witness, Your Honor. He advised us. That information is
16 corroborated by the facts of this case and things that he
17 would not know ordinarily. And we suggest, Your Honor,
18 that for that reason, the adjustment applies here.

19 THE COURT: All right. Defense?

20 MR. PROCTOR: And we submit, you know, whether
21 the government -- what steps the government took is almost
22 of no moment. What the guideline requires is that the
23 defendant used violence or made a credible threat. The
24 best authority on that is Ms. Sadler. What did she say?
25 He's never threatened her. She corresponds with him on a

1 weekly basis.

2 THE COURT: well, how would she know about him
3 seeking to have her killed if it hadn't been communicated
4 to her?

5 MR. PROCTOR: I guess --

6 THE COURT: I mean the testimony that I've got
7 before me now --

8 MR. PROCTOR: Rather than --

9 THE COURT: -- indicates that the language used
10 by Mr. Morales --

11 MR. PROCTOR: Get with her.

12 THE COURT: -- is get with and --

13 MR. PROCTOR: Mr. Stokes, who Mr. Morales had
14 known for two whole months, extrapolated it to mean kill.
15 You know, the testimony is Mr. Morales knew where she
16 lived, knew her phone number. Nothing happened.
17 Approaching someone in jail that you don't know from Adam
18 and saying do you know anyone on the street, that's
19 miniscule compared to the other people he could have
20 taken. You know, the mutual family members in common.
21 Mr. Morales' entire families are still on the streets of
22 Baltimore. Not a stone throw away from the longshoremen
23 in Dundalk. And so it's pure speculation. It certainly
24 doesn't rise to a preponderance. If Ms. Sadler had said
25 people driving by my door, I ceased all contact with him.

1 You know, she's not remotely intimidated by him. weekly
2 to this day she speaks to him. You know, the Court can't
3 find based purely on Mr. Stokes' comment. Mr. Stokes
4 certainly has no shortage of motive to come to court and
5 make his cooperation look more substantial than it is.
6 There's not enough here to make that two-level finding.
7 You heard from Ms. Sadler. She didn't remotely strike me
8 as someone who in any way believed that Mr. Morales was
9 capable of threatening her --

10 THE COURT: What difference does it make whether
11 she thinks he's capable of doing it if the basis of the
12 proposed enhancement of the offense level by the
13 government is something that was said by the defendant to
14 the witness who just testified in the confines of a prison
15 where she's not present? How would she feel threatened if
16 she doesn't know that he's done that?

17 MR. PROCTOR: You can't look at that in a
18 vacuum. Again, you have to look at whether there were any
19 threats made. If you buy Mr. Stokes' story, hook, line
20 and sinker, I should sit down and preserve my objection.
21 But when you look at the better picture, you can't find
22 there were threats made here because of all the
23 surrounding statements. How long she was on the street,
24 the fact that she was allowed to self-surrender, the fact
25 that he knew where to find her any given day or night and

1 where to find the daughter. And that there's no basis to
2 believe other than Mr. Stokes' self-serving statement.

3 THE COURT: Okay. Ms. Wilkinson?

4 MS. WILKINSON: Your Honor, the last point that
5 I wanted to add really goes to the heart of the language
6 of the guideline itself, which says if the defendant used
7 violence, which we're not contending here, made a credible
8 threat to use violence or directed the use of violence.
9 We're obviously relying on the made a credible threat to
10 use violence enhancement here.

11 THE COURT: Or to direct the use of violence by
12 somebody else.

13 MS. WILKINSON: Yes. Or to direct the use of
14 violence by Mr. Stokes. But clearly, it's a credible
15 threat and the reason why it's credible was because of the
16 information he provided to Mr. Stokes that Mr. Stokes
17 would not know ordinarily. He wanted Mr. Stokes who he
18 knew to be a 15-year lifer, i.e., not a cooperator who was
19 in the USP, one of the few people he knew from Baltimore,
20 who was doing time for murder to help him make sure that
21 Ms. Sadler would not decode the language that are all in
22 these tapes. How would Mr. Stokes know any of that
23 information except if Mr. Morales didn't provide it to
24 him? If this isn't a credible threat to use violence and
25 our reactions to that because Mr. Morales was also pending

1 or under investigation for a murder for hire at that time,
2 I don't know what it is.

3 THE COURT: All right. I have heard the
4 argument of the government and I've considered the
5 testimony of Mr. Stokes. I view his testimony with
6 caution and care as we always instruct juries in the case
7 of people who may be cooperating in the hope of earning
8 their freedom. I do however accept his testimony. I find
9 it credible, especially in light of the fact that such
10 substantial information about Ms. Sadler was conveyed to
11 him. I find that it is credible and by more than a
12 preponderance of the evidence, I conclude that the
13 defendant did make a credible threat to direct the use of
14 violence against her and therefore, I'm going to enhance
15 the offense level by two levels instead of no levels as
16 provided in paragraph 28 of the presentence report.

17 All right. Now the next adjustment is the -- or
18 disputed adjustment I believe is paragraph 30. Is this
19 disputed by the defense?

20 MR. PROCTOR: No, sir, it isn't.

21 THE COURT: All right. Well, I will apply that.
22 Then the next one is paragraph 31, the use of the minor
23 child to enter the prison and so forth. Any dispute about
24 that?

25 MR. PROCTOR: I believe you've already ruled on

1 it. I just reiterate my objection to it.

2 THE COURT: All right. I conclude for the
3 reasons previously stated when we were talking about the
4 factual content of the presentence report where the facts
5 of the offense are set forth, that this is a proper
6 adjustment, the objection of the defense is noted and
7 overruled. I will apply the two-level enhancement
8 provided in paragraph 31 as recommended by the probation
9 officer.

10 That brings us then to paragraph 33 where that
11 level of 26 would now be 28 as a result of the
12 enhancement. And that would bring us to paragraph 34,
13 which brings us to 34 without regard to what I just went
14 through in the other adjustments. Correct?

15 MR. PROCTOR: Yes, sir.

16 THE COURT: So I mean most of what we've been
17 doing is academic because of the ultimate trumping of the
18 whole thing in paragraph 34. So the offense level is 34.
19 The determinations I made as to the early arrests would
20 not affect that. Correct, Ms. Wilkinson?

21 MS. WILKINSON: That's correct, Your Honor. And
22 I do have a copy of the certified convictions of both
23 underlying career offender if the Court wants me to put
24 them on the record.

25 THE COURT: Any dispute about those?

1 MR. PROCTOR: No dispute.

2 THE COURT: All right. Then you don't need to
3 put them in. They're not disputed.

4 All right. So we are at offense level 34. We
5 otherwise would have been at 28, but for the enhancement
6 provided in paragraph 34 because of the criminal history.
7 The government objects to the two-level reduction for
8 acceptance of responsibility in paragraph 35. So let me
9 hear from the government on that.

10 MS. WILKINSON: Your Honor, it's very clear from
11 the sentencing guideline manual that just because you
12 plead guilty doesn't mean you automatically get acceptance
13 of responsibility if you deny responsibility for some of
14 the basic facts about this case and that's what this whole
15 morning has been about. Denying some of the very basic
16 facts about this case. Mr. Morales has engaged in an
17 ongoing effort to bring drugs into the institution through
18 two females and his sister and he was also directing the
19 use of a female to try to sell marijuana on the outside of
20 the institution. He clearly had in mind that his daughter
21 would be an easy mark for the correctional officers
22 because he was very clear in his instructions to Ms.
23 Sadler about that. He's denied that as well. He has
24 denied the threat through his -- he hasn't officially
25 denied it. But by calling Mr. Stokes here and vigorously

1 attacking his testimony, he has not accepted
2 responsibility for any of the underlying activity and the
3 government would ask this Court not to give him an
4 adjustment for acceptance of responsibility.

5 THE COURT: All right. Defense?

6 MR. PROCTOR: Thank you. Mr. Morales pled
7 guilty to a mixture of heroin. I haven't heard any denial
8 of that. You know, I must have had 20 sentencings where
9 we dispute, was he a minor role, was it not a minor role,
10 was it an aggravated role, was it not an aggravated role?
11 Were there sophisticated means? What's the fraud level?
12 How many victims were there? In all those 50 sentencings
13 I've had where we've left matters in dispute and that's
14 what we're talking about here, matters in dispute, not
15 once did I ever lose acceptance. Not once did the
16 government even ask for acceptance to be lost. You know,
17 when you look at 3E1.1, you're not required to volunteer
18 or affirmatively admit relevant conduct beyond the offense
19 of conviction. We admitted the offense of conviction. We
20 pled to the indictment. 3E1.1(h). Timeliness is a factor
21 you can consider. Mr. Morales indicated prior to the
22 government replying to motions of his intention to plead
23 guilty.

24 And, judge, again if I saw this earlier, I would
25 have briefed it. I don't mean to sandbag the government.

1 United States versus Kise, K-I-S-E, a Fourth Circuit case
2 from 2004 --

3 THE COURT: What's the citation?

4 MR. PROCTOR: It is 369 F.3rd 766. What
5 happened in that case in a nutshell was pled guilty in a
6 timely manner to being -- it was some sort of child
7 pornography case. And while at Butner, Mr. Kise gave some
8 statements that basically indicated ten-year olds could
9 consent to sexual acts and that sort of stuff. And the
10 Court took away his acceptance of responsibility because
11 by making those statements, the Court find he had not
12 accepted the wrongfulness of his conduct, which was
13 unobjected to at sentencing. The Fourth Circuit found
14 that to be clear error and reversed. And that's what
15 we're talking about here. Mr. Morales admits he
16 distributed heroin.

17 THE COURT: I'm making a copy of the case for me
18 and Ms. Wilkinson so we can take a look at it.

19 MR. PROCTOR: Thank you.

20 THE COURT: Okay.

21 MR. PROCTOR: Mr. Morales admits that he
22 distributed drugs. And, you know, we went through all
23 these adjustments. Several of them, organizer or leader,
24 for example, that it was a penal institution. I didn't
25 object to. You asked was there any dispute and I said no.

1 You asked about his prior record and I didn't dispute it.
2 You know, we believe there was -- and we're talking about
3 Mr. Morales here. His counsel believed there was a
4 colorable basis to argue certain enhancements. So we did
5 so. But that does not approach the level of failing to
6 accept responsibility. So for those reasons, I believe
7 you should award him the two levels.

8 THE COURT: All right. Let me give a copy to
9 Ms. Wilkinson.

10 MS. WILKINSON: I want to also direct the
11 Court's attention to the Sentencing Guidelines 3E1.1,
12 Application Note 3.

13 THE COURT: Give me the page number because it's
14 awful to look it up that way.

15 MS. WILKINSON: It's on page 365 continuing onto
16 page 366 in the yellow manual. Do you have the yellow
17 manual?

18 THE COURT: 365?

19 MS. WILKINSON: 365.

20 THE COURT: I got it.

21 MS. WILKINSON: 3E1.1, Application Note 3.

22 THE COURT: Okay. On page 366. Right?

23 MS. WILKINSON: Um-hum.

24 THE COURT: I got it.

25 MS. WILKINSON: Entry of a plea of guilty prior

1 to the commencement of trial combined with truthfully
2 admitting the conduct comprising the offense of conviction
3 and truthfully admitting or not falsely denying any
4 additional relevant conduct will constitute significant
5 evidence of acceptance of responsibility.

6 Mr. Morales told the pretrial -- Ms. Brewster
7 when she was interviewing him that the amount of drugs
8 here was only not even 15 grams I think his words were
9 used. To me, based on the evidence that is very clear in
10 this case, that's simply not true.

11 MR. PROCTOR: And if I may respond to that? The
12 amount of drugs brought into the jail by Mr. Morales, we
13 don't know. None was recovered. He's not in a position
14 to know how much Ms. Sadler picked up. He's not in a
15 position to know anything other than what was delivered to
16 him one time in the jail, which you heard testimony from
17 Ms. Sadler was something less than 13. So is that an
18 affirmative attempt to mislead the Court to some -- you
19 know, the Court can't find that. He pled guilty prior to
20 motions being replied to. Acceptance of responsibility is
21 applicable in this case.

22 MS. WILKINSON: And I would just note at
23 paragraph 21 of the presentence report that in addition to
24 falsely denying the quantity of heroin, he also told
25 Ms. Brewster that he had told Ms. Sadler to bring their

1 child to visit as it was his birthday and not because it
2 would make it easier for her to smuggle in the heroin.

3 MR. PROCTOR: And the only response to that I
4 have, judge, what we're here for is a sentencing on a
5 heroin conspiracy. We're not here for a smuggling via
6 child. He accepted responsibility for what we're here
7 for.

8 THE COURT: This is a fairly close call, but I
9 conclude that the adjustment of -- reduction of two levels
10 for acceptance of responsibility should be applied in this
11 case. The overall culpability in this case, the defendant
12 admits to being involved in the introduction of heroin
13 into the facility. So I conclude the adjustment is
14 appropriate. So that brings us down to a total combined
15 offense level of 32. That is my final determination of
16 the offense level.

17 I believe the parties indicated earlier in the
18 proceeding that we are in agreement that the Criminal
19 History Category is 6. Is that correct?

20 MR. PROCTOR: Yes, sir.

21 THE COURT: All right. And that then brings us
22 under the guidelines at 32 and 6 to a sentencing range of
23 210 to 262 months. And that is my application of the
24 guidelines, which we usually get to in about five minutes
25 and it took us two and a half hours, but we've gotten

1 there.

2 Now I need to hear from the defense with respect
3 to the appropriate sentence. Why don't we take a
4 five-minute break and then we'll all be refreshed and can
5 launch into that including any allocution by the
6 defendant? And do you have any sentencing witnesses?

7 MR. PROCTOR: No, sir.

8 THE COURT: No. All right. And the defendant
9 does wish to allocute?

10 MR. PROCTOR: We'll discuss it --

11 THE COURT: Discuss it with him for five minutes
12 and then we'll proceed. All right. Thank you.

13 (Recess.)

14 THE COURT: You may proceed.

15 MR. PROCTOR: Thank you. I think, judge, just
16 about everything that could be said about this case has
17 been said. A couple of things I did want to --

18 THE COURT: I did read your mitigation --

19 MR. PROCTOR: Right.

20 THE COURT: -- non-death penalty memo very
21 carefully.

22 MR. PROCTOR: Thank you. And I know you did
23 because you always do.

24 THE COURT: I try.

25 MR. PROCTOR: Especially in a public courtroom,

1 some things are better not said. Mr. Morales didn't have
2 the best of childhoods. In fact had a pretty bad one.

3 THE CLERK: Can barely hear you.

4 MR. PROCTOR: I'm sorry, Ms. Bea. The next
5 thing I want to point out is we were never offered a plea
6 in this case. So I think like the first sentence of Ms.
7 wilkinson's sentencing memorandum was the defendant pled
8 straight up. We weren't offered a plea. And second of
9 all, judge, I can't remember a case in this district where
10 when a defendant timely notified the court of his
11 intention to plead guilty, that an 851 notice was filed
12 regardless. And so I think that's important here.

13 I also want to point out you've accepted the
14 government's suggestion about what the quantity is and I
15 don't dispute that. But it's 43 grams of heroin, judge.
16 It's three tablespoons. Three tablespoons equals
17 approximately 40 grams. I didn't do a scientific study,
18 but that's what Google says. Three tablespoons. You
19 know, Mr. Morales got 22 years for 17,100 grams of cocaine
20 in Texas and the government wants to give him more than
21 that for three tablespoons. You know, it's so far beyond
22 what is a proportionate sentence. Already he's getting
23 out when he's approximately 54 years old. To give him the
24 sentence that the government is asking for, it's
25 effectively a life sentence. You know, the B.O.P., it

1 costs them \$28,000 to incarcerate someone a year.
2 Twenty-seven times 28,000 is three quarters of a million
3 dollars, which in these fiscal times we should be
4 cognizant of for three tablespoons.

5 The last point I want to make is that the
6 sentence I'm asking for is 188 months and let me tell you
7 how I get there. The government and only the government
8 can move for the third level for acceptance of
9 responsibility. I don't dispute that. This is not me
10 asking you to find bad faith and impose it over their
11 objection or anything like that. But I believe it's a
12 reason to vary one level.

13 You know, in 3E1.1 when it talks about the third
14 level, it says in a manner that avoids the government
15 preparing for trial. If you find the two levels because
16 the Court was spared preparing for trial, there's a good
17 reason to -- you know, we note prior to the government
18 applying the motions, we timely notified the Court. The
19 guilty plea went through without a hitch. And so a
20 one-level variance would take us from a 32 to a 31. 31/6
21 is 188 to 235. So I suggest a sentence at the bottom of
22 that guidelines. I would ask for a variance sentence if I
23 thought you would entertain it for a moment. But I don't
24 think you would and I'm not going to make a request that's
25 going to get shot down pretty quickly. So I'm asking for

1 a sentence at the bottom of what the guideline would have
2 been had the government moved for the third level, a one
3 level variant to 188 months. I believe that's sufficient
4 but not greater to satisfy the goals of sentencing. And,
5 you know, I'd just ask the Court to keep in mind that what
6 we're talking about here is 40 something grams, a
7 miniscule amount. Certainly, this Court sees all manner
8 of people pleading guilty to drugs before it and most of
9 them are in the several hundred grams category, not such a
10 trivial amount. So thank you.

11 THE COURT: All right. Would your client like
12 to address the Court? I would be glad to hear from him if
13 he wishes to address the Court.

14 MR. PROCTOR: He would not.

15 THE COURT: All right. Mr. Morales, do you
16 understand you have a right to address the Court if you
17 wish to do so before I sentence you?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And you elect not to speak to me?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: All right. I respect your decision.
22 Ms. Wilkinson?

23 MS. WILKINSON: Yes, Your Honor. And of course,
24 if Mr. Morales would like to say something after I
25 allocute --

1 THE COURT: I can't hear you.

2 MS. WILKINSON: If Mr. Morales would like to say
3 something after I allocute, I certainly have no objection
4 to that.

5 THE COURT: He can always change his mind.

6 MS. WILKINSON: Thank you, Your Honor. Your
7 Honor, the government is not embarrassed or ashamed of its
8 27-year consecutive recommendation in this case as
9 Mr. Proctor would perhaps like us to feel by his
10 allocution. Mr. Morales has spent his entire life
11 minimizing and not truly accepting responsibility for his
12 life of crime. He is and to quote my own sentencing
13 memorandum, Your Honor, a hopeless recidivist. Indeed I
14 was preparing for sentencing last night and I was
15 re-reading the pre-sentence report and a fact escaped
16 noticed to me earlier that he had gotten some medication
17 while he was down in Texas and according to the reports
18 that are undisputed here and I'm referring to page 136 of
19 his presentence report, he had sold the medication for
20 commissary money when he was in Texas. Then he gets
21 sentenced to 262 months, a whopping sentence admittedly
22 and because of his criminal history and the amount of
23 drugs, an appropriate one. And not virtually a minute
24 goes by, Your Honor, that Mr. Morales isn't at it again.
25 That 262-month sentence went in one ear and out the other.

1 Filed his 2255 and started right back to business at a
2 federal correctional institution and albeit a very nice
3 federal correctional institution albeit a very nice
4 federal correctional institution because I went up there
5 one time to visit Mr. Morales. And instead of trying to
6 make right what he had done out on the streets, he was
7 back with the women in his life trying to get them and
8 successfully so to sell -- to get drugs into the
9 institution and to sell them outside the institution. For
10 what? For money. And sitting here today and watching Ms.
11 Sadler testify, the Court can easily see the kind of man
12 that we are talking about here today. And just listening
13 to the calls and hearing Mr. Morales' voice, he is a
14 master, master manipulator and he knows nothing from right
15 from wrong. And from the minute he went into that
16 institution as the Court can hear, he was right back at it
17 again.

18 Your Honor, I cannot in good conscience even
19 suggest that anything less than the sentence he got in
20 Texas would do anything but even remotely deter this
21 defendant from the criminal activity he's engaged upon.
22 As the Court probably read in our supplemental sentencing
23 memorandum just filed two weeks ago, Mr. Morales' name was
24 on his subscriber information was on a contraband
25 telephone in CTF. Now, Your Honor, you know, you only

1 have to read the newspapers to understand the problems
2 that are going on in our correctional facilities now,
3 particularly pretrial detention facilities in Baltimore.
4 And there Mr. Morales is not only having a contraband
5 phone in his name that was found on a person, Your Honor,
6 by the way, for whom he testified at a trial up in federal
7 court about a month or so ago, he also had delivered to
8 him in the institution the most serious -- and I have a
9 copy if the Court wants to look at it -- the most serious,
10 serious type of gang paperwork one could imagine and it
11 all pertains to a gang called Dead Man's, Inc. In here,
12 Your Honor, it talks about how to be the best criminal a
13 person can be and Mr. Morales is well on his way to being
14 that, Your Honor.

15 And if you look at this paperwork and understand
16 what he was doing because this paperwork was found in
17 another inmate's cell, but it was directed to him I
18 believe from another sister from the way I look at it, a
19 sister that lives in Port Charlotte, Florida.

20 Mr. Morales' fingerprints, so to speak, not literally, of
21 course, but figuratively are all over this document and I
22 start first with the fact, Your Honor, that in the
23 document itself, it is written by a source called
24 Mr. Sweeney, the founder of DMI. And we know that
25 Mr. Morales knows DMI because he told the law enforcement

1 officers about his knowledge about Mr. Sweeney and the
2 founder of DMI back in August of 2008.

3 So here he is coming off, fresh off the heels of
4 a judge just like yourself, Your Honor, trying to deal
5 with the problems of drugs in America, having a very stern
6 sentencing to Mr. Morales, talking about the seriousness
7 of his conduct and he doesn't pay one hoot of attention to
8 it. Instead he gets the women in his life, the mothers of
9 his children to participate in that criminal activity into
10 a federal correctional institution. You can minimize and
11 talk about it being three tablespoons of heroin, but, Your
12 Honor, we cannot underestimate the principles that are at
13 issue here when we talk about the sanctity of our federal
14 prisons as a place for rehabilitation and deterrence. And
15 Mr. Morales has done none of that.

16 Also, Your Honor, I know that because he's a
17 career offender, some of the conduct issues that we spent
18 all morning on, the sentencing guideline calculations
19 "don't matter" under the guidelines. But, Your Honor,
20 they do matter --

21 THE COURT: Can you inform the Court as to where
22 in the guideline range if I were to impose a guideline
23 sentence --

24 MS. WILKINSON: Your Honor, the government is
25 actually asking for an upward, an upward variance. The

1 government's recommendation is 27 years in this case. And
2 it changes not that the -- I respect the Court's finding
3 about acceptance of responsibility. But I believe that
4 Mr. Morales' sentence should be for a level 34, Category 6
5 at the high end of the 27 months. And I make that
6 recommendation, kind of what Mr. Proctor did, but in the
7 reverse. As he went down for what he thinks was not
8 timely acceptance because we did not agree to timely
9 acceptance. Mr. Morales didn't give timely acceptance in
10 this case. That's not what happened in this case by this
11 hearing, Your Honor. But also in addition to that, Your
12 Honor, he -- this is five years more than what the Texas
13 judge sentenced him to. As opposed to five years less,
14 we're asking for five years more and it's because of the
15 deterrent effect such a sentence will have not only on Mr.
16 Morales because I'm not sure that will ever effect
17 Mr. Morales. But for the vast majority of other inmates
18 out there. Hopefully, some of them that are trying to put
19 their life on the right and narrow like Mr. Stokes or like
20 Mr. Morales might be deterred when the judge finds out,
21 you know what, it's not just a violation of internal, you
22 know, prison rules to bring drugs in. It's against the
23 law. And if anybody was a career offender in this case,
24 it's Mr. Morales.

25 THE COURT: So you're asking for a variance

1 sentence then. Correct?

2 MS. WILKINSON: I am, Your Honor. And I base
3 that based on -- for the reasons I set forth in my
4 sentencing memorandum. And as I indicated, Your Honor,
5 the sentencing guideline factors here are not really taken
6 into consideration once you find he's a career offender.
7 So all these things about that the Court found about use
8 of a minor and obstruction of justice and, you know,
9 importing drugs into a federal correctional institution,
10 because he's a career offender, those factors get lost.
11 And it could be that he just sold, you know, 20 grams of
12 heroin out or 40 grams of heroin out on the street. And
13 you can take that information and put it into a 3553
14 analysis and consider it all over again in the context of
15 him, a career offender. And you can look at the fact that
16 he -- the aggravating circumstances of his offense as well
17 as his background, character and conduct. And that's why
18 the government is asking for the variance sentence, Your
19 Honor.

20 MR. ZUCKER: Judge, can I respond to some points
21 that were just brought up?

22 THE COURT: I'll just give your client another
23 chance if he has anything he wants to say in response to
24 what she said. I'd be glad to give him a chance to
25 respond if he would like.

1 MR. ZUCKER: Sure. But I would like to respond
2 to actually to some matters that came up --

3 THE COURT: All right. To make sure that he
4 really has a chance, I'll give him another chance if he
5 wants.

6 MR. ZUCKER: Do you want me to ask him that now
7 or do you want to hear from me first?

8 THE COURT: Do you wish to make any statement,
9 Mr. Morales?

10 THE DEFENDANT: No, sir.

11 THE COURT: All right. You may proceed.

12 MR. ZUCKER: Your Honor, I just wanted to
13 respond to the -- essentially what was in the supplemental
14 sentencing memorandum, which came up the prosecutor just
15 alluded to. And it's basically three points. The first
16 is that Mr. Morales -- it should be held against him that
17 he testified in the trial. I was counsel for him in that
18 trial. He was brought in as a witness. We asserted the
19 Fifth Amendment. It was rejected as to certain aspects of
20 his testimony and he was compelled to testify as would any
21 witness and he testified truthfully as a result of the
22 denial of that Fifth Amendment. why in the world his
23 sentence should be enhanced for that is somewhat of a
24 mystery to me.

25 There was great reference to this DMI paperwork

1 and to put it in context, Mr. Sweeney, the author of that
2 document is a childhood associate of Mr. Morales' family.
3 Another member of his family downloaded something from the
4 Internet. It was connected with I think a City Paper
5 article -- Baltimore Sun article on DMI. On their website
6 was a document authored by Mr. Sweeney. It was downloaded
7 from there and sent to Mr. Morales by his sister
8 admittedly so because this was someone they grew up with.
9 And to say that as a result of downloading something that
10 was in the public domain authored by somebody he grew up
11 with and sending it to him to read while they are in
12 prison, that somehow some nefarious involvement from him
13 with DMI should be inferred is simply -- well, it's
14 strange credulity. It's preposterous. There's no reason
15 that should be a factor one iota in his sentencing.

16 And the last point that was made was there was a
17 cell phone recovered in the jail in the possession of
18 someone else and that at some point, someone else had used
19 Mr. Morales' name in obtaining that phone. It wasn't his.
20 It wasn't found on him. It wasn't recovered from him.
21 And why that should be enhanced, you know, is also
22 somewhat of a mystery. It seems that with all due
23 deference to my colleagues, they want to use anything they
24 can to besmear this man. They don't have to. They have
25 enough clean evidence here and they have a plea to a

1 conspiracy to bring heroin into an institution. Why they
2 need to go further than that with this additional stuff
3 that really shouldn't be in the Court's calculation is
4 somewhat of a mystery.

5 And one last final point as Mr. Proctor pointed
6 out, Mr. Morales given the sentence, if you give him
7 probation, he won't get out until his mid '50's. If you
8 give him the sentence that the defense has asked for, 15
9 and a half years on top of, you know, the sentence he's
10 currently serving, he'll be close to 70 when he gets out.
11 To say that that isn't sufficient deterrence, he'll be way
12 past the years when anyone is likely to be involved in any
13 additional criminal activity. The Court does not need
14 follow the prosecution's overkill.

15 (It is the policy of this court that every
16 guilty plea and sentencing proceeding include a bench
17 conference concerning whether the defendant is or is not
18 cooperating.)

19 THE COURT: All right. The defendant is before
20 me today for sentencing after having entered a plea of
21 guilty to two counts, one of conspiracy to distribute
22 heroin and another one of conspiracy to distribute
23 marijuana. I have listened to the testimony, the argument
24 of counsel. I've reviewed the memoranda. I have applied
25 the guidelines. And my application of the guidelines

1 after disputing -- after resolving any disputed factors
2 leads me to a conclusion that the combined offense level
3 is 32, Criminal History Category of 6, which I arrive at
4 after giving a two-level reduction for acceptance of
5 responsibility that's disputed by the government. I've
6 resolved some other disputes along the way. But they in
7 the end were not ultimately determinative of the offense
8 level because of his status as provided in paragraph 34
9 where he is determined to be a career offender because of
10 the conviction set forth in that paragraph. So he is a 34
11 minus 2 at 32. 32 and 6 produces a sentencing range of
12 210 to 262 months. And as counsel is aware, that's the
13 first step in the sentencing process, not the last. I
14 give that no presumption of correctness. And I have to
15 answer the ultimate question under Section 3553 of what
16 sentence would be sufficient, but not greater than
17 necessary to comply with the purposes of sentencing set
18 forth in that section in Subsection A(2). So let me
19 address those factors and then determine what would be an
20 appropriate sentence.

21 Let me before I address the specific subsection
22 A(2) factors talk about the nature and circumstances of
23 the offense, which also causes me to address seriousness
24 of the offense. The offense of conviction here is one of
25 using various devices to smuggle drugs into a federal

1 prison. And that is an offense, the seriousness of which
2 is hard to overstate. Persons that go to federal prisons
3 are not necessarily nice people, but they deserve to have
4 a safe and drug-free environment. And when somebody
5 introduces drugs into that environment, you threaten the
6 entire penal system and corrupt it and thwart its purposes
7 of punishment and rehabilitation to introduce and
8 especially in the case of heroin, a narcotic drug, into
9 that environment. It is simply something that cannot be
10 countenanced and it's an offense at the very highest level
11 of seriousness that one can imagine.

12 The history and characteristics of the
13 defendant, I will not go into all of the matters set forth
14 in the submission made by the defense. I think the short
15 version of it is that this gentleman had a very troubled
16 childhood and I would not wish that on anyone. But the
17 history of him as a criminal is what I need to focus on,
18 not his history in his childhood. That childhood history
19 may have led him into a life of crime, but he has indeed
20 led a life of crime. And it is a life of crime that is so
21 extensive and so clearly indicative of not being deterred
22 by earlier sentences, not showing respect for the law and
23 engaging in criminal activity over and over and over
24 again, including engaging in criminal activity while
25 incarcerated. So it is a very ugly picture that the Court

1 confronts in making a determination of the appropriate
2 sentence.

3 So let me now go through the Subsection A(2)
4 factors. I've already commented on the seriousness of the
5 offense. I won't repeat that again. I'm required to
6 consider the need for the sentence imposed and to promote
7 respect for the law and to afford adequate deterrence to
8 criminal conduct. Those factors are extremely negative
9 for this defendant because earlier sentences have utterly
10 failed to deter him and have utterly failed to cause him
11 to respect the law. And those are extremely negative
12 factors for him in the analysis under Subsection A(2).

13 I'm required to provide just punishment for the
14 offense and I intend to do that. This is an offense that
15 deserves significant punishment.

16 I'm also required to consider the need to
17 protect the public from further crimes of the defendant.
18 One would hope that being incarcerated would be sufficient
19 to protect the public from further crimes. It has not
20 been sufficient in the case of this defendant because he's
21 continued to engage in criminal activity while
22 incarcerated. That means that any future incarceration of
23 this defendant is even more problematic in the sense that
24 special steps need to be taken by the Bureau of Prisons to
25 be certain that he is not able to continue to carry on

1 criminal activities from behind bars.

2 I'm required to consider the need to provide him
3 with educational or vocational training, medical care or
4 other correctional treatment in the most effective manner.
5 That clearly is going to have to be in an incarcerated
6 setting. One that he's already in as a result of his
7 conviction in another jurisdiction.

8 I'm required to consider the kinds of sentences
9 available. The only kind that's available or appropriate
10 in this case is incarceration.

11 I'm required to consider the need to avoid
12 unwarranted sentence disparities among defendants with
13 similar records who have been found guilty of similar
14 conduct. I've done that. That is the principal purpose
15 of the sentencing guidelines to promote uniformity and
16 they have been very helpful in that analysis in this case.

17 And finally, the need to provide restitution to
18 any victims of the offense. That's not going to be a
19 factor I can act upon in any monetary sense here. But
20 make no mistake about it. The Bureau of Prisons is the
21 victim of the crime in this case in the sense that the
22 sanctity of the four walls of a prison has been violated
23 by the introduction of contraband drugs into a federal
24 prison, which is an extremely serious matter.

25 So I bring myself back to ask the question that

1 I posed when I began my discussion of 3553 factors is what
2 would be a sentence that would be sufficient, but not
3 greater than necessary to comply with the purposes of
4 sentencing that I just reviewed. And if a sentence within
5 the guideline range would be sufficient, then I should
6 select a sentence within that range. If not, I should
7 determine whether a sentence outside that range would be
8 appropriate.

9 I have considered the range of sentence in this
10 case, which is as I've applied the guidelines, 210 to 262
11 months and I conclude that a sentence within that range
12 would be sufficient but not greater than necessary to
13 comply with the purposes of sentencing. I fully
14 understand the desire of the government to argue for and
15 hopefully secure a variance sentence that would be some 62
16 months, if I do my math correctly, higher than the high
17 end of the guideline range in this case or approximately
18 five years longer. And I don't think I need to do that.

19 This defendant is already under a lengthy term
20 of imprisonment. My sentence in this case would be
21 consecutive to that. It will not be concurrent. And I
22 believe that a sentence in this range, but not at the
23 bottom of it would be the appropriate sentence especially
24 in light of the egregious nature of the crime in this case
25 in terms of introduction of addictive drugs into a federal

1 prison.

2 while I conclude that a sentence within the
3 range would be sufficient, but not greater than necessary,
4 I conclude that not one month less than 262 months would
5 be appropriate. I am, therefore, going to impose a
6 sentence of 262 months.

7 The defendant is already incarcerated. So I
8 don't think there would be any point in me recommending a
9 place of incarceration. So I won't do that.

10 Now that will be the sentence with respect to
11 Count 1. The sentence on Count 2 will be 120 months to be
12 concurrent with the sentence on Count 1. And the
13 sentences are to be consecutive to the term of
14 imprisonment he's currently serving in the southern
15 district -- from a sentence in the Southern District of
16 Texas.

17 I will place the defendant on a period of
18 supervised release at the completion of his sentence.
19 There's six years on Count 1 and four years on Count 2
20 concurrent with Count 1. I will impose the mandatory and
21 standard conditions of supervision with the additional
22 provisions that he participate in a program relating to
23 substance and/or alcohol abuse, participate in a mental
24 health treatment program, provide the probation officer
25 with access to any requested financial information, not

1 incur new credit charges or open additional lines of
2 credit without the approval of the probation officer.

3 I will not impose any fine in this case because
4 of the absence of any ability to pay. I will impose as
5 required by law the mandatory special assessment of \$100
6 per count for a total of \$200.

7 I want to advise the defendant that he has a
8 right to appeal the sentence that I've just imposed to the
9 United States Court of Appeals for the Fourth Circuit,
10 which is a federal appellate court having jurisdiction
11 over decisions of this court. If you wish to appeal, you
12 must do so within 14 days of today's date. Otherwise,
13 your right to appeal will be waived. If you're unable to
14 pay the filing fee, there are procedures that the clerk of
15 the court or your two attorneys can explain to you to have
16 the filing fee waived. But if you wish to challenge your
17 conviction or your sentence, you must initiate that appeal
18 within 14 days of today's date. Otherwise, your right to
19 appeal will be lost. Do you understand that, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Anything?

22 MS. WILKINSON: Your Honor, just if the Court
23 would, I think the Court gave a very thorough 3553
24 analysis and I see that the Court has given the exact same
25 sentence as the Texas and not one month less and I

1 understand the Court's reasons for that. I want to make
2 sure though, Your Honor, that the record is clear that
3 whether or not Mr. Morales is a "career offender" and that
4 the Court found helpful the guidelines, the same sentence
5 would be opposed under 3553 --

6 THE COURT: I can assure you that. I mean I
7 don't think there's any question of his career offender
8 status. But if I were to conclude that the offense level
9 was lower than that which I imposed in this case, I would
10 find a guideline sentence not to be sufficient and I would
11 have imposed the same sentence I just imposed. I mean
12 this is a very serious matter. I believe it requires a
13 substantial sentence. It needs to be consecutive to the
14 existing sentence in light of the fact that it was
15 committed while he was serving that sentence. And but
16 make no mistake about it. To the extent if at all, I have
17 erred in calculating the ultimate offense level in this
18 case on the basis of his career offender status, the
19 sentencing range that would result would be too low and --

20 MS. WILKINSON: Thank you, Your Honor.

21 THE COURT: -- I would impose a higher sentence.
22 All right. Anything further?

23 MS. WILKINSON: No, sir.

24 MR. ZUCKER: No, sir.

25 THE COURT: All right. Thank you very much.

(Proceedings concluded.)

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CERTIFICATE OF REPORTER

I, Lisa K. Banks, an Official Court Reporter for the United States District Court for the District of Maryland, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the sentencing in the case of the United States of America versus Jose Morales, Criminal Action Number RWT-11-514, in said court on the 1st day of August, 2013.

I further certify that the foregoing 133 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, together with the backup tape of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this 6th day of September, 2013.

Lisa K. Banks

Lisa K. Banks
Official Court Reporter

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